

# The Nation's Best Employment Law Conference Has Gotten Even Better!

The 2010 Upper Midwest

# Employment Law Institute



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

In Addition to 100 Seminar Sessions  
and Nearly 2,000 Pages of Terrific Materials,  
Take a Look at These Extra Benefits in 2010:

**1.** You'll Receive Our  
All-New ***Discipline and  
Discharge Handbook!***

**2.** **Nancy Leppink**, Deputy  
Administrator, Wage and Hour  
Division, Department of Labor  
(WASHINGTON DC), explaining  
the Latest Enforcement  
Directions Concerning the  
FMLA and FLSA

**3.** **Bonus Webcasts** After  
the Institute on Breaking  
Employment Law  
Developments or Ethical  
Requirements

**4.** A New EEOC "School" featuring:

- **Peggy Mastroianni**, Associate Legal Counsel (EEOC, WASHINGTON DC)
- **Chris Kuczynski**, Assistant Legal Counsel & Director of the ADA Policy Division (EEOC, WASHINGTON DC)
- **John Hendrickson**, Regional Attorney (EEOC, CHICAGO)
- **Julie Schmid**, Acting Area Director (EEOC, MINNEAPOLIS)
- **Laurie Vasichek**, Senior Trial Attorney (EEOC, MINNEAPOLIS)

*And Much More!*

May 24 & 25, 2010 • Saint Paul RiverCentre

# 103 Great Sessions, 130 Time-Saving Resource Materials New Bonus Benefits

## A Very Special Bonus – This Year You Will Receive, at No Extra Charge, the New *Discipline and Discharge Handbook!*

This year we have added even more to the value of the Institute. You will receive the *Discipline and Discharge Handbook* written just for this Institute. In-house counsel, private practitioners, human resource professionals and litigators will all find this easy-to-read text incredibly useful – it's brimming with practical advice on one of the most difficult issues of all.

## The Institute Provides the Most Thorough Update of Any Employment Law Conference in the Country!

One of the main purposes of this Institute is to provide a thorough update (in both oral and written form) on every new law development impacting those involved with employment law. The conference features 6 plenary updates – including updates on the ADA, Title VII, Department of Labor initiatives, and the EEOC. Other sessions include an FLSA update, a new “litigators update,” an 8th Circuit case update, an update on retaliation cases, an FMLA case update, update sessions on EEOC initiatives, and more!



## We Let You Create the Program That Best Meets Your Needs – You Choose From More Than 100 Sessions

Everyone comes with differing education needs. That's why we've created a conference that lets you choose the sessions most relevant and important to you. Nearly every aspect of employment law is covered, so from start to finish, your custom-tailored Institute schedule promises to be jam-packed with topics you care about.

With so many sessions to choose from, we help guide you to the right sessions by labeling tracks such as “Advisors & In-House Counsel,” “Litigators” and other designations.

You'll receive materials from every session – both those you attend and those you do not – all in the *2010 Employment Law Handbook* in a searchable CD-ROM format.

## Institute “Schools” – Something for Everyone!

This year's Institute features new “schools” designed around key topics – in addition to the many other sessions from which you can choose. Take a look at these new schools...you may find one that's just right for you. Feel free to attend all – or just some – of the sessions in each series:

- **New Discipline and Discharge School**
- **New Litigation Strategy School**
- **New EEOC School**
- **New International Employment Law School**

## A Great Faculty Gathered to Teach You!

There is no place else you could go to find so many outstanding teachers gathered to teach you the latest legal developments and “how to” tips. Hundreds and hundreds of hours are being put into making this the best possible event for you. Don't miss it.

# Faculty, Materials & !



## Dozens of New Sessions and Some Back by Popular Demand !

### 8 Wage and Hour Sessions – An All-Star Lineup on One of the Biggest Areas of Potential Liability for Employers

The Institute features an emphasis on potential FLSA problems and on FLSA litigation. Every employer, advice-giver and litigator will enjoy useful sessions discussing the law, practical advice or litigation strategy. Check out the lineup and make your plans to attend some of these important programs.

### You'll Leave with a Wealth of Written Resource Materials – Including Summary Guides,<sup>SM</sup> Legal QuickSheets<sup>SM</sup> and the New Developments Checklist

Every Institute attendee receives all 2,000 pages of materials from the conference on a searchable CD-ROM. These materials are prepared by our faculty just for this conference. They include the latest developments and the most current analysis of the topic addressed. In addition, every attendee will receive popular Summary Guides<sup>SM</sup> Legal QuickSheets<sup>SM</sup> and the 2010 New Developments Checklist.

### It's Like a Two-Day Retreat – You'll Leave Energized and Refreshed

Don't miss this once-a-year chance to review your professional practices. It's two days to discuss and ask questions of others who are doing the same thing as you. You'll learn better and easier ways to do things more effectively, and new ideas to employ. Plus you'll have a great time visiting with friends and colleagues. You'll leave re-energized and refreshed.

Take a look at just some of them! Every year the Institute features dozens of new titles taught by new speakers. We also bring back some of the most popular – updated with the latest legal analysis. Our goal is to provide the finest and most current educational experience possible. Among the many great sessions at this year's Institute are:

- The New EEOC School
- New Department of Labor Update
- The Social Media Revolution 2010 – From Facebook Firings to Twittering Away the Workday
- A Practical Guide to Drafting Employee Disciplinary Memos
- Bullying in the Workplace – And What to Do About It
- Strategic Case and Trial Planning
- Whistleblower and Retaliation Update and Strategy
- The Employee is Absent...Again
- Top 17 Wage and Hour Traps for Employers
- Retaliation Litigation in the Trenches
- Obtaining FMLA Medical Certification
- Non-Compete Litigation: Trends, Traps and Strategies
- Special Issues Surrounding Sales Persons
- Data Privacy and Security – The Law and Practical Solutions
- Diversity Programs and Affinity Groups – Creating Employee Satisfaction or a Legal Nightmare?
- The Always Popular 8th Circuit Update
- California Dreaming – Wage and Hour Traps in the Gold Rush State
- Non-Competition Litigation – From TRO to Final Verdict or Settlement
- Are They Really Independent Contractors?
- Making the Discipline and Discharge Decision
- The ADA Interactive Process – An Essential Skill for Every Company
- I-9s and E-Verify – Current Best Practices
- Preventing Workplace Violence
- Employee Privacy Basics
- Risky Business – Valuing Cases and Gaining/Avoiding Explosive Verdicts
- Managing a Multi-Cultural Workforce
- Interviewing Techniques In-Depth
- Employment Law Issues in the European Union, China and India
- The Litigators' Update – *Iqbal*, *Gross*, eDiscovery, New Jury Instructions, and More
- Background Checks – Using Online Resources and Social Networking Sites
- EEO Tune-up for Federal Contractors
- And Much, Much More!

With more than 100 sessions, you'll find numerous topics that will be of great interest and benefit to your practice. Examine the entire schedule and choose those sessions that are best for you. And for those sessions you cannot attend...you'll receive fabulous materials in the *Employment Law Handbook* on a fully searchable CD-ROM.

**Register  
today!**

651-227-8266  
800-759-8840  
[www.minncle.org](http://www.minncle.org)

*Nowhere else will you find as many great opportunities...receive such great materials...and have such a fun time in the process. Use the handy enclosed registration form to register today.*

# Check Out 3 of the **EXCITING NEW BENEFITS** for This Year's Institute Attendees!

1

## A New "EEOC School" – Hear Directly from National, Regional & Local EEOC Attorneys & Policy Makers

This year's Institute features a new track of sessions designed to give you practical insight, analysis and updates directly from the D.C., Chicago and Minneapolis offices of the EEOC. What an invaluable resource for advisors and litigators alike!

This "EEOC School" is planned to be internally cohesive so you can attend it from start to finish and enjoy an in-depth update from the EEOC. Or, you can feel free to "drop in" and just attend a few, or one, of the sessions – each session is programmed to be a strong solo performer as well.

The school features:

- **Peggy Mastroianni**, Associate Legal Counsel (Washington DC)
- **Chris Kuczynski**, Assistant Legal Counsel & Director of the ADA Policy Division (Washington DC)
- **John Hendrickson**, Regional Attorney (Chicago)
- **Julie Schmid**, Acting Area Director (Minneapolis)

Plus, you'll benefit from the expertise and insights of the EEOC's **Laurie Vasichek**, Senior Trial Attorney (Minneapolis), who'll be presenting in the litigation track at the Institute.

3

## Bonus 2-Hour Webcast After the Institute – A Convenient Way to Get Even More Information (...and Additional Credits!)

As an added bonus, this year you can take – at no additional charge – a selected two-hour webcast program offered by Minnesota CLE. We are specially designing three webcast programs relevant to attendees, and you get to choose which one best suits your particular needs. One of the two-hour webcasts will cover attorney ethics issues and therefore be eligible to fulfill part of an attorney's ethics requirement.

This is a terrific opportunity to get even more information on topics of interest to you, as well as to secure additional credits you need for your reporting requirements!

2

## The New *Discipline and Discharge Handbook* – An Indispensable Guide, Free for Every Attendee

This year, in addition to the 2000-page Institute text on CD-Rom, you'll also receive a brand new ***Discipline and Discharge Handbook*** at no extra cost! This easy-to-use 12-chapter book provides practical guidance on dealing with one of the most significant issues in employment law. Chapters include:

- The Rules of Disciplinary Documentation
- A Practical Guide to Drafting Employee Disciplinary Memos
- Contracts, Handbooks and Other Employment Documents That May Impact Discipline or Discharge
- Fact Gathering, Including Investigating Alleged Misconduct and Inappropriate Behavior
- Making the Discipline or Discharge Decision
- The Termination Meeting
- Separation Agreements and Releases
- Post-Termination Issues
- Special Issues Regarding the Discipline or Termination of Unionized Employees
- Special Issues Regarding the Discipline or Termination of Public Employees
- State Law Considerations: A Checklist Approach
- Employer Mistakes – Insights from Plaintiffs' Counsel

In-house counsel, private practitioners, human resource professionals and litigators will want to keep this indispensable guide close at hand upon returning to the office.

# Faculty & Planners

National Speaker

**Darnell M. Allen**  
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*Special thanks to the  
Institute planners. Their  
efforts have helped shape  
an outstanding conference.*

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Gregg M. Corwin  
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Robert R. Reinhart  
Ellen G. Sampson  
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Karen G. Schanfield  
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Joseph G. Schmitt  
Laurie A. Vasichek  
Liane M. Wong  
Paul J. Zech

# At-A-Glance: Day 1 – Monday, May 24, 2010

## 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. 2010 ADA Update

The newest cases and their impact (and the new regulations if promulgated).

*Gary B. Eidelman*  
*Saul Ewing, LLP; Baltimore, Maryland*

### 2. New U.S. Department of Labor Initiatives

The latest directions and enforcement strategies regarding FMLA, FLSA and more.

*Nancy J. Leppink*  
*Wage and Hour Deputy Administrator*  
*U.S. Department of Labor; Washington DC*

### 3. New Title VII Developments

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

*Katherine L. Butler*  
*Butler & Harris; Houston, Texas*

8:10 – 9:50 a.m.

## ALTERNATE PLENARY SESSION

### Basic Employment Law and Practice

Covering the essentials of the employment relationship including hiring, contracts, discrimination, handbooks, FMLA, ADA, discipline, discharge and more.

*Judith Bevis Langevin*

## COLOR KEY:

Basics

Advisors & In-House Counsel

In-House Counsel

Litigators

Public Sector

Ethics & Elimination of Bias

School

See page 2 for more information about "schools."

10:20 – 11:15 a.m.

## BREAKOUT SESSION A

11:25 – 12:20 p.m.

## BREAKOUT SESSION B

Basics	001 <b>Repeated at #401</b> <b>FMLA – Basic Law and Practice – Incorporating the 2009 Changes</b> <i>Krakow</i>	101 <b>Back by Popular Demand Repeated at #901</b> <b>Wage and Hour Basics – Getting It Right</b> <i>Ellingstad &amp; Sosna</i>
	002 <b>Non-Union Employers: What You Don't Know About Labor Law Could Hurt You</b> <i>Schanfield</i>	102 <b>2010 FMLA Update – New Regulatory Developments, New Legislation and New Cases</b> <i>Harris</i>
Discipline and Discharge School	003 <b>Rules of Discipline Documentation</b> <i>Boisvert</i>	103 <b>A Practical Guide to Drafting Employee Disciplinary Memos</b> <i>Phillips</i>
	004 <b>Legal and Practical Implications of Managing a Multi-Cultural Workforce</b> <i>Dees, Greene, Hunt &amp; Miller</i> <i>O'Brien Berquist (moderator)</i>	104 <b>Dealing with Workplace Bullies</b> <i>Sepler</i>
	005 <b>Data Privacy and Security – The Law and Practical Solutions</b> <i>Fleming</i>	105 <b>May the Sales Force Be with You – Statutory and Common Law Provisions Unique to Minnesota Sales Employees and Independent Contractors</b> <i>Oberman</i>
EEOC School	006 <b>The Americans with Disabilities Act – EEOC Perspective</b> <i>Kuczynski</i>	106 <b>The Minneapolis EEOC Area Office – An Update on What Is New at the EEOC Locally</b> <i>Schmid</i> <i>Ella (moderator)</i>
	In-House Counsel	007 <b>Help!!! My Facebook De-Friended YouTube and Ran Off With Twitter!</b> <i>Lawler, Ludgate &amp; Thomas</i> <i>Sheih (moderator)</i>
Litigators		008 <b>2-hour session</b> <b>Strategic Case and Trial Planning</b> <i>Bogas, Fox, Prophete &amp; Shank</i> <i>Kaster (moderator)</i>
	Public Sector	009 <b>Title VII – An In-Depth Update</b> <i>Butler &amp; Schmitt</i>

1:30 – 2:30 p.m.  
BREAKOUT SESSION C

201  
**Privacy Basics**  
*Karasov*

202  
**The Social Media Revolution 2010 – From Facebook Firings to Twittering Away the Workday**  
*Martin & Sheih*

203  
**Investigating Alleged Misconduct and Inappropriate Behavior**  
*Krakow*

204 **Back by Popular Demand**  
**Tick Tock – Is This Work on the Clock? Advising Clients About Today’s FLSA “Off the Clock” Hot Spots**  
*Phillips*

205 **Repeated at #902**  
**The ADA and Employee Mental Health Issues – After the New ADA Amendments**  
*Huntrods*

206  
**Genetic Information Nondiscrimination Act – EEOC Perspective**  
*Kuczynski*

207  
**Preventing Workplace Violence in Your Company**  
*Farnsworth & Zech*

208  
**Hot Topics in Attorney-Client Privilege for In-House Counsel**  
*Greene*

209  
**Strategies I’ve Observed in My Courtroom – What Works and What Doesn’t**  
*Bennett*

210 **Repeated at #408**  
**8th Circuit and Federal District Court Update**  
*Bremer & Smith*

211  
**Data Practices: Show What You Know**  
*Krisnik*

2:45 – 3:45 p.m.  
BREAKOUT SESSION D

301  
**Introduction to Drug and Alcohol Testing in the Workplace**  
*Trepanier*

302  
**ADA Interactive Process – Procedures to Follow When Accommodation Issues Arise**  
*Wolf*

303  
**Making the Discipline or Discharge Decision – Walking the Fine Line Between Candor and “Minnesota Nice”**  
*Raphan*

304  
**20 More Bothersome Employment Law Questions – From New Law to Tough Everyday Issues**  
*Mrkonich*

305 **Repeated at #903**  
**Immigration Recordkeeping – I-9s and E-Verify**  
*Myers & Wright*

306 **2-hour session**  
**Are They Really Independent Contractors? The USDOL, the States and the Plaintiff’s Bar Focus on “Mischaracterization” of Employees**  
*Hobbins & Mick*

307 **2-hour session**  
**Labor and Employment Law Issues in Merger and Acquisition Transactions – Plus HR Considerations for Transition**  
*Christensen & Zappa*

**Ethics & Bias**

308 **1.0 ethics credit applied for**  
**Ethics for the Employment Law Litigator**  
*Greene & Melton-Meaux*

309  
**Pleading Strategy in Employment Law Cases**  
*Engelmeier, Roe & Smith*  
*Ho (moderator)*

310  
**Non-Compete Litigation: Recent and Developing Trends, Traps and Strategies**  
*Hammell, Oberman & Pentelovitch*

311  
**Public Funding and Unallotment – What Happened and What Does It All Really Mean?**  
*Beety & Corwin*

4:00 – 5:00 p.m.  
BREAKOUT SESSION E

401 **Repeat of #001**  
**FMLA – Basic Law and Practice – Incorporating the 2009 Changes**  
*Krakow*

402  
**Top 17 Wage and Hour Traps for Employers**  
*Reinhart*

403  
**The Termination Meeting – A Step-by-Step Guide**  
*Engelmeier*

404  
**Minimizing and Managing Risks of Discrimination, Harassment and Retaliation Claims**  
*Dellmuth & Hammell*

405  
**Union Organizing Today and the Significant Changes on the Horizon**  
*Cecere*

406 **1.0 elim. of bias credit applied for**  
**Elimination of Bias: Implicit Bias in the Courtroom**  
*Bennett*

407  
**Strategic Discovery Practice**  
*Drake, Thome & Wilk*  
*Knapp (moderator)*

408 **Repeat of #210**  
**8th Circuit and Federal District Court Update**  
*Bremer & Smith*

# At-A-Glance: Day 2 – Tuesday, May 25, 2010

## 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

- 2010 Minnesota Update**  
New Minnesota legislation, regulation and cases.  
*Ellen G. Sampson*
- An EEOC Update**  
New developments, directions, and enforcement initiatives.  
*Peggy R. Mastroianni*  
*Associate Legal Counsel, EEOC*  
*Washington DC*
- Other Important New Federal Developments**  
Developments in federal employment law including ADEA, FMLA, immigration and more.  
*Robert C. Boisvert, Jr.*

8:10 – 9:50 a.m.

## ALTERNATE PLENARY SESSION

### Step by Step – Employment Investigations from Beginning to End

Investigating workplace complaints and problems is an essential part of a successful employment setting. Done well, investigations can increase employee perceptions of fairness, engagement and generate decisions that are balanced and proportionate. Done poorly, investigations can be demoralizing and increase odds of litigation. This session will take a sweeping look at employment investigations, identifying each essential step and the practice tips to ensure investigations are effective and defensible.

*Fran A. Sepler*

### COLOR KEY:

Basics

Advisors & In-House Counsel

In-House Counsel

Litigators

Public Sector

Ethics & Elimination of Bias

10:20 – 11:15 a.m.

## BREAKOUT SESSION F

11:25 – 12:20 p.m.

## BREAKOUT SESSION G

### Basics

601

**Hiring Basics: Best Practices and Legal Guidelines**

*Anderson*

### Advisors & In-House Counsel

501

**Back by Popular Demand Repeated at #904**

**Reverse Networking and Un-Friending – Using Google, Facebook and Other Searches to Screen Potential Employees**

*Bolter & Merley*

602

**Management Decisions and the Human Resources Department – Avoiding or Creating Liability?**

*Ginsburg*

### Discipline and Discharge School (cont.)

502

**Post-Termination Issues – Legal and Practical Considerations**

*Noecker*

603

**Repeated at #906**

**Separation Agreements and Releases: Writing Separation Agreements That Stick**

*Papacek*

### Advisors & In-House Counsel

503

**FMLA Leave – The Medical Certification and Recertification Process**

*Goldsmith*

604

**Back by Popular Demand**

**Absent Again – Chronic Absenteeism and How to Handle It Effectively**

*Fokken & Lawler*

### Int'l. Empl. Law School

504

**International Employment Law Basics for In-House Advisors**

*Willard Olson*

605

**Europe – Key Employment Law Idiosyncrasies and Traps**

*Gardner & O'Sell*

### EEOC School (cont.)

505

**Culture in the Workplace – And Potential Discrimination Issues – EEOC Perspective**

*Mastroianni*

606

**Direct from the EEOC Chicago District Office – Information on Trends, Policy and Initiatives**

*Hendrickson*  
*D'Aquila (moderator)*

### In-House Counsel

506

**Data Privacy and Security – In-House Counsel Responsibility**

*Cline, Rush & Rystrom*  
*Bolin (moderator)*

607

**Diversity and Inclusion Initiatives**

*Allen, Mrkonich-Wilson & Wells*  
*Wong (moderator)*

### Litigators

507

**2010 FLSA Update – In-Depth**

*Lukas & Parlo*

608

**Repeated at #907**

**A Cooperative Approach to eDiscovery That Works for Both Plaintiff and Defense**

*McGuire*

508

**Repeated at #708**

**The 2010 Employment Law Litigators Update**

*Cummins & McGrane*

609

**FLSA Litigation – The Hottest Issues in the Hottest Cases**

*Braziel, Lukas & Parlo*  
*Reinhart (moderator)*

509

**Risky Business: How to Better Value Your Case, Avoid/Win Explosive Verdicts and Maximize Settlement Success**

*Ho, Stingley & Vasichuk*  
*Stenmoe (moderator)*

610

**Winning and Losing Retaliation Lawsuits**

*Halunen, Holstein & Puklich*  
*Zech (moderator)*

### Public Sector

611

**Containing Personnel Costs in Local Government: Current Trends and Legal Implications**

*Lepak*

School

See page 2 for more information about "schools."

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

1:30 – 2:30 p.m.  
BREAKOUT SESSION H

**701**  
**The Basics of Discrimination and Harassment Claims: Tips for Prevention and Response**  
*Castle*

**702 2-hour session**  
**Effective Interviewing – An In-Depth Training**  
*Sepler*

**703 Repeated at #905**  
**Solving the High-Risk Personality Problem In Your Workplace: A3 (Arrogant, Abrasive, Authoritarian) = C3 (Conflict, Complaint, Cause of Action)**  
*Murney, O'Brien & Raphan*

**704**  
**Leave for Military Personnel and Their Families – Including New Law**  
*Wood*

**705**  
**Employment Relationships in China**  
*Noecker & Rolfs*

**706**  
**Terminating an Employee Shareholder: "What Do You Mean He Expected to Stay Employed for the Rest of His Life?"**  
*Viksnins*

**707**  
**California Dreaming – Wage and Hour Pitfalls in the Gold Rush State**  
*Droke & Lawler*

**708 Repeat of #508**  
**The 2010 Employment Law Litigators Update**  
*Cummins & McGrane*

**709**  
**Updating Your ADA Litigation Strategies in Light of the New Law**  
*Duddleston, Lienemann & Roby Schaefer (moderator)*

**Ethics & Bias**  
**710 1.0 ethics credit applied for**  
**If It's Tuesday, This Must Be Omaha: Handling the Ethics Issues in Multi-Jurisdiction Practice**  
*Cooperstein*

**711**  
**Whistleblowing in the Public Sector: Winning Ways and Wrongful Woes**  
*Parker & Tanick*

2:45 – 3:45 p.m.  
BREAKOUT SESSION I

**801**  
**The Basics of Employee Recordkeeping**  
*Seaton*

**802 Back by Popular Demand**  
**Navigating the Bermuda Triangle: Practical Guidance on the Intersecting, Sometimes Conflicting Worlds of FMLA, ADA and Workers' Compensation**  
*Phillips*

**803**  
**Assessing the Legality of Pre-Employment Assessments**  
*Girouard & Schmitt*

**804**  
**India – The 10 Most Important Issues Facing U.S. Companies That Engage Workers in India**  
*Gardner & O'Sell*

**805**  
**What You Don't Spot Can Hurt You: Benefits Bites for Employment and HR Professionals**  
*Hitesman*

**806 Back by Popular Demand**  
**Preserving Electronic Evidence Before Litigation Starts**  
*Chalstrom & Frantz O'Brien Berquist (moderator)*

**807**  
**Spotting and Preventing FLSA Landmines Before They Explode**  
*Braziel, Lukas & Parlo Reinhart (moderator)*

**808 Repeat of #109**  
**Whistleblower and Retaliation Claim Update and Strategy**  
*Culberth & Thompson*

**809 1.0 elim. of bias credit applied for**  
**Elimination of Bias: Practical Tips for Working with Clients and Employees with Disabilities**  
*Hoopes*

**810**  
**Public Sector Open Forum**  
*Beety, Corwin & Lepak*

4:00 – 5:00 p.m.  
BREAKOUT SESSION J

**901 Back by Popular Demand Repeat of #101**  
**Wage and Hour Basics – Getting It Right**  
*Ellingstad & Sosna*

**902 Repeat of #205**  
**The ADA and Employee Mental Health Issues – After the New ADA Amendments**  
*Huntrods*

**903 Repeat of #305**  
**Immigration Recordkeeping – I-9s and E-Verify**  
*Myers & Wright*

**904 Back by Popular Demand Repeat of #501**  
**Reverse Networking and Un-Friending – Using Google, Facebook and Other Searches to Screen Potential Employees**  
*Bolter & Merley*

**905 Repeat of #703**  
**Solving the High-Risk Personality Problem In Your Workplace: A3=C3**  
*Murney, O'Brien & Raphan*

**906 Repeat of #603**  
**Separation Agreements and Releases: Writing Separation Agreements That Stick**  
*Papacek*

**907 Repeat of #608**  
**A Cooperative Approach to eDiscovery That Works for Both Plaintiff and Defense**  
*McGuire*

# Session Descriptions: Day 1 – Monday, May 24, 2010

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. 2010 ADA Update

The newest cases and their impact (and the new regulations if promulgated).

*Gary B. Eidelman*

*Saul Ewing, LLP; Baltimore, Maryland*

### 2. New U.S. Department of Labor Initiatives

The latest directions and enforcement strategies regarding FMLA, FLSA and more.

*Nancy J. Leppink*

*Wage and Hour Deputy Administrator*

*U.S. Department of Labor; Washington DC*

### 3. New Title VII Developments

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

*Katherine L. Butler*

*Butler & Harris; Houston, Texas*

8:10 – 9:50 a.m.

## ALTERNATE PLENARY SESSION

### Basic Employment Law and Practice

Covering the essentials of the employment relationship including hiring, contracts, discrimination, handbooks, FMLA, ADA, discipline, discharge and more.

*Judith Bevis Langevin*

10:20 – 11:15 a.m.

## BREAKOUT SESSION A

### 001 FMLA – Basic Law and Practice – Incorporating the 2009 Changes



Repeated at #401

An overview of the requirements of the federal Family and Medical Leave Act (FMLA), including the recent regulations. Includes what employers are covered, what employees are entitled to FMLA leave, the reasons for which employees must be provided leave, and the protections given to employees on FMLA leave.

*Mary M. Krakow*

### 002 Non-Union Employers: What You Don't Know About Labor Law Could Hurt You

The National Labor Relations Act protects both union and non-union employees, often in unexpected ways. For example, confidentiality policies are common in many workplaces, but can violate employees' rights under the NLRA if they prohibit or suggest that employees cannot discuss wages and working conditions with one another. Similarly, electronic use policies, non-solicitation policies, and absenteeism policies can violate the protections employees and unions have to communicate with one another and to be free from discrimination and retaliation for exercising rights under the Act. The Obama Labor Board is expected to reverse several prior Board decisions by providing non-union employees the right to representation during disciplinary interviews, expanding the allowable use of company e-mail for non-work purposes, and limiting workplace rules that regulate abusive language.

*Karen G. Schanfield*

### 003 Rules of Discipline Documentation

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.*

### 004 Legal and Practical Implications of Managing a Multi-Cultural Workforce

The influx of immigrants has changed the demographics of many workplaces. An experienced panel will cover the legal issues that you must be aware of when managing employees who speak different languages and who have different religious and cultural beliefs. They will also discuss the skills that managers need to be effective in managing a multi-cultural workforce.

*Andriel Monique Dees, Merle Greene, David B. Hunt &*

*Michelle A. Miller*

*MODERATOR: Alice O'Brien Berquist*

### 005 Data Privacy and Security – The Law and Practical Solutions

Businesses today have myriad obligations to both properly use as well as secure many types of data, including employee data, customer data, medical data and other private information. Businesses owe those obligations both by law as well as contractually. This session will provide a review of some of the major privacy and data security laws and contractual programs that Minnesota businesses must pay attention to, and suggests terms of employee policies that help businesses comply with their privacy and security obligations.

*Michael F. Fleming*

### 006 The Americans with Disabilities Act – EEOC Perspective

Changes to the ADA that became effective on January 1, 2009 make it easier for individuals to establish that they are protected by the law. This session will offer the EEOC's perspective on the most important provisions of the ADA Amendments Act related to the definition of the term "disability" and the implications of these changes on ADA requirements such as the obligation to provide reasonable accommodation.

*Christopher J. Kuczynski*

### 007 Help!!! My Facebook De-Friended YouTube and Ran Off With Twitter!

Experienced in-house counsel on the front lines share their expertise on how to address social networking issues in the workplace. Join us in this interactive benchmarking session using "electronic polling" to answer some of the toughest questions we face as inhouse counsel, including what to put in a social networking policy, what kind of use to allow on work time,

*Register  
today!*

651-227-8266

800-759-8840

[www.minncle.org](http://www.minncle.org)

how to handle jobvent.com postings, how to determine whether social networking is “work” for wage and hour purposes, and what employee behavior crosses the line.

*Katherine A. Lawler, Kristen M. Ludgate & Mary B. Thomas*  
 MODERATOR: Eugene Sheih

**008 Strategic Case and Trial Planning**

**2-hour session**

Jim Kaster heads an all-star panel that will provide strategies, tactics and tips for strategically planning your case, giving you the best chance to win at trial. Specific topics include developing case theories and themes, using focus groups to test ideas and concepts, planning jury instructions from the beginning, strategizing your opening statement and your witness order and much more! This is a “can’t miss” session for anyone who litigates employment law cases.

*Kathleen L. Bogas, Michael R. Fox, Donald S. Prophete & Mark A. Shank*  
 MODERATOR: James H. Kaster

**009 Title VII – An In-Depth Update**

A more in-depth look at the newest cases, their meaning, and how to apply them to your practice.


*Katherine L. Butler & Joseph G. Schmitt*

**11:25 – 12:20 p.m.**  
**BREAKOUT SESSION B**

Strategic Case and Trial Planning (continued)

**101 Wage and Hour Basics – Getting It Right**

 **Back by Popular Demand**  
**Repeated at #901**

 Understanding the rules and making sure that employees are properly designated as exempt or non exempt; Paying for time worked, understanding “off the clock” issues, what is “flex time?”; Complying with all the technical rules to make sure your company is not sued.

*Susan E. Ellingstad & Jeremy D. Sosna*

**102 2010 FMLA Update – New Regulatory Developments, New Legislation and New Cases**

This seminar provides both a legal update and practical application of all the FMLA law changes. Materials that accompany this session include the latest FMLA forms for monitoring leave and gathering medical information. This program is designed only for those already familiar with the basics of FMLA.

*Pamela M. Harris*

**103 A Practical Guide to Drafting Employee Disciplinary Memos**

Learn when and how to use disciplinary memos; specific instruction on what to include and exclude. Sample memos provided.

*Penelope J. Phillips*

**104 Dealing with Workplace Bullies**

Workplace bullying is a disruptive and costly problem that, according to recent research, does more psychological damage than protected class harassment, yet few employers have policies or programs which define and prohibit workplace bullying. Participants will learn the definitions, causes and effects of workplace bullying, and become familiar with best practices for the eradication of bullying in the workplace.

*Fran A. Sepler*

**105 May the Sales Force Be with You – Statutory and Common Law Provisions Unique to Minnesota Sales Employees and Independent Contractors**

Minnesota laws unique to sales employees and contractors, including statutory and common law provisions relating to commissions, other payments, non-compete and confidentiality issues and other disputes typically found in the sales area – to help both employers and sales employees/contractors understand their rights and obligations and plan accordingly.

*Jeffrey B. Oberman*

**106 The Minneapolis EEOC Area Office – An Update on What Is New at the EEOC Locally**

A unique opportunity to hear directly from the Acting Area Director of the EEOC’s Minneapolis Area Office, in a session moderated by an employment attorney with both defense and plaintiff’s counsel experience. Find out about what’s new at the EEOC locally and how the EEOC works internally, from investigating charges to when mediation is offered in the process and more. Includes time for Q&A with the attendees.

*Julie Schmid*  
 MODERATOR: V. John Ella

**107 EEO Tune-up for Federal Contractors: Preparing for Increased Enforcement**

OFCCP just received its largest annual budget increase ever, and the agency is expected to hire an estimated 200 additional personnel in 2010. With an increase in desk audits and on site reviews the likely result, now is the time for federal contractors to review and improve their EEO and affirmative action compliance programs. This session will provide a brief overview of the OFCCP’s emerging enforcement priorities and then will provide guidance on compliant and best practice approaches to prepare for increased scrutiny in some key areas, including the agency’s emphasis on EEO and AA obligations relating to veterans and individuals with disabilities, linking good faith outreach efforts to areas of underutilization, and preparing for an on site review.


*David J. Goldstein & Kristen M. Ludgate*


**108 Practical Tips When Non-Compete Agreements Are in Play**

What steps can you take when hiring a new employee to minimize the risk of being sued by her previous employer? What should you do when one of your key employees leaves to protect your company’s interests? Hear dozens of practical tips from two experienced attorneys who have been on both sides of these disputes.

*T.J. Conley & Gary B. Eidelman*

**109 Whistleblower and Retaliation Claim Update and Strategy**

 **Repeated at #808**

 Celeste Culberth and John Thompson review the latest state and federal whistleblower and retaliation cases, and how those impact claims brought in Minnesota. Make sure you are up to date with the most current plaintiff and defense strategies regarding pleading, defenses, discovery, summary judgment motions, and more.

*Celeste E. Culberth & John D. Thompson*

**110 The Public Sector Practitioner’s Essential Case Law Update**

Join us for a discussion of the significant new Minnesota and federal employment cases – the facts, the holdings, and the practical implications for your clients.

*Stephen F. Befort, William J. Everett & Ann E. Walther*

**1:30 – 2:30 p.m.**  
**BREAKOUT SESSION C**

**201 Privacy Basics**

This session will discuss the common law and statutory law of privacy in the workplace. Employees and employers are concerned about the legal constraints on an employer’s right to search an employee’s personal belongings and office equipment. Also, in today’s electronic world employers must be knowledgeable about the scope of their right to read, monitor, listen to, disseminate or copy an employee’s electronic communications. The session will focus on the basic laws and causes of action relevant to privacy in the workplace.

*Phyllis Karasov*

**202 The Social Media Revolution 2010 – From Facebook Firings to Twittering Away the Workday**

Global interaction and communication that occur via the internet and social networking systems such as MySpace, YouTube, Twitter, and Facebook implicate many employment law issues. This interactive session provides video clips and discussion concerning the impact of social media on employment law issues (including harassment, retaliation, dissemination of private information, discrimination and more) and how employers should address conduct revealed through the social media revolution.

*Patrick R. Martin & Eugene Sheih*

**203 Investigating Alleged Misconduct and Inappropriate Behavior**  
Before disciplining or discharging, getting the accurate facts is essential. This session will teach you how to better confirm the accuracy of the allegations, document it appropriately and, at the same time, not unnecessarily create turmoil in the workplace.

*Mary M. Krakow*

**204 Tick Tock – Is This Work on the Clock? Advising Clients About Today’s FLSA “Off the Clock” Hot Spots**



**Back by Popular Demand**

Donning and doffing; Powering up a work computer; Being interrupted with work questions while on break; Checking work e-mails from home. This session identifies activities likely to lead to questions about whether the work should be considered “on” or “off” the clock – that is, whether the time spent on those activities be calculated as part of “hours worked” (and maybe overtime) for FLSA purposes. You’ll leave with a better understanding of how to analyze off-the-clock issues, as well as practice tips for dealing with the associated time-keeping issues.

*Penelope J. Phillips*

**205 The ADA and Employee Mental Health Issues – After the New ADA Amendments**



**Repeated at #902**

This session utilizes case studies to illustrate how to analyze and work through workplace problems when employees suffer from depression or other mental health issues.

*Ann Huntrods*

**206 Genetic Information Nondiscrimination Act – EEOC Perspective**

This first major federal employment discrimination law of the twenty-first century prohibits the use of genetic information to make employment decisions, strictly limits employer access to genetic information, and imposes strict confidentiality requirements on those employers who have genetic information about applicants or employees. This session will explore GINA’s main provisions – from the definition of the term “genetic information” itself, to the specific circumstances under which the acquisition and disclosure of genetic information is and is not permitted.

*Christopher J. Kuczynski*

**207 Preventing Workplace Violence in Your Company**

What are the indicators that an employee (or former employee) might be a threat in the workplace? How do you assess the seriousness of the threat? Should all situations be handled the same? Are there some things you should always do? What are the available options and what resources can you bring to bear to protect your employees? How do you fire someone you fear? Learn important steps and guidelines you should employ to keep your workplace safe.

*Michael Farnsworth & Paul J. Zech*

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

In-house attorneys are increasingly playing a variety of roles within companies, including corporate attorney; personal adviser to executives and employees; business executive; contract negotiator; personnel director; and more. This multiplicity of roles can render more of your communications discoverable than might think. This session will provide insight on how to recognize the role you are playing at a given time and the impact that may have on discoverability of your communications and written work. It 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*

**209 Strategies I’ve Observed in My Courtroom – What Works and What Doesn’t**

Judge Bennett presents another popular session – this time focusing on the strategies employed by both plaintiff and defense counsel in his courtroom. He’ll discuss what strategies are successful and which ones backfire. As always, Judge Bennett’s session will be both instructive and fun – don’t miss it.

*Judge Mark W. Bennett*

**210 8th Circuit and Federal District Court Update**



**Repeated at #408**

Learn all of the important new cases in the Eighth Circuit and from Minnesota Federal District Court.

*Cynthia A. Bremer & Steven Andrew Smith*

**211 Data Practices: Show What You Know**

Test your knowledge of the Data Practices Act by using our audience-voting keypads in this interactive quiz, using actual data practices situations. You’ll be asked to decide whether data should be released, who gets it, and how much time the governmental agency has to respond. Then your presenter will discuss the right answers and the wrong answers. Don’t worry – all responses are anonymous.

*Anne F. Krisnik*

2:45 – 3:45 p.m.

## BREAKOUT SESSION D

**301 Introduction to Drug and Alcohol Testing in the Workplace**

This session, filled with practical guidance, will summarize the essential legal components of an effective drug/alcohol testing program under U.S. Department of Transportation (“DOT”) regulations for commercial truck drivers as well as a Non-DOT drug/alcohol testing program under the Minnesota Drug & Alcohol Testing in the Workplace Act. Topics to be covered include key differences between DOT and Non-DOT testing; categories of testing (e.g., pre-employment, reasonable suspicion, random); discipline and termination issues; handling dilute and adulterated specimens; “direct observation” for urine collection; “on-site” drug testing; and breath alcohol testing for Non-DOT employees. This session is a must for in-house legal counsel, HR managers, and supervisors responsible for overseeing their employer’s drug/alcohol testing program.

*Craig W. Trepanier*

**302 ADA Interactive Process – Procedures to Follow When Accommodation Issues Arise**

An even more important topic after the recent ADA amendments, this session will provide a step-by-step method for identifying disabilities, and considering and implementing ADA reasonable accommodations.

*Nancy J. Wolf*

**303 Making the Discipline or Discharge Decision – Walking the Fine Line Between Candor and “Minnesota Nice”**

Walking that fine line is never simple but must be done. And given that the best defense is a good offense, position yourself well to defend against a lawsuit. This session will walk you through the steps to take in making smart decisions about discipline and discharge from analyzing the issue to conducting the due diligence to realizing when you are at the end of the line.

*Melissa Raphan*

**304 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*

**305 Immigration Recordkeeping – I-9s and E-Verify**



**Repeated at #903**

Best practices for I-9 compliance, re-verifications and recordkeeping; Usage of E-verify, electronic storage, preparing the memorandum of understanding and more.

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

**306 Are They Really Independent Contractors? The USDOL, the States and the Plaintiff’s Bar Focus on “Mischaracterization” of Employees**

**2-hour session**

As a growing segment of the U. S. workforce is comprised of personnel engaged by employers as independent contractors rather than employees, a host of regulators and employee advocates are pressing this question. This session will explore the criteria applied in making the contractor/employee distinction, the stakes involved in getting it wrong, and some “best practices” safeguards for employers.

*Robert L. Hobbins & Ryan E. Mick*

**307 Labor and Employment Law Issues in Merger and Acquisition Transactions – Plus HR Considerations for Transition**

**2-hour session**

A complete review of critical labor and employment law issues in all types of mergers and acquisitions, from due diligence to covenants, to negotiations, to retaining key employees, to the all important integration process. Also includes discussion of key business and HR planning activities and more!

*Douglas R. Christensen & James M. Zappa*

### 308 Ethics for the Employment Law Litigator



1.0 ethics credit applied for

An important discussion of litigation ethical issues including sanctions, ex parte contact, conflicts of interest, joint representation agreements and more.

Clifford M. Greene & Antone M. Melton-Meaux

### 309 Pleading Strategy in Employment Law Cases

Making strategic decisions from day one; Choosing the causes of action – both statutory and common law; Choosing the right court and the right defendants (especially in light of the new “enterprise” decision); Pleading after *Iqbal* and motions to dismiss; Avoiding sanctions; Affirmative defenses; Statute of limitations and more.

Sheila A. Engelmeier, Jessica L. Roe & Steven Andrew Smith

MODERATOR: Martin B. Ho

### 310 Non-Compete Litigation: Recent and Developing Trends, Traps and Strategies

Three of Minnesota’s top non-compete lawyers will address current cases, practices and trends facing parties litigating non-compete disputes, including: forfeiture clauses, claw-back provisions and other “mid-stream” agreement issues; the impact of the tough economy on TRO, injunction, damage and litigation strategies; jurisdictional battles, choice of law disputes and other multi-state issues; and other new and developing claims and defenses in the non-compete world.

Joseph W. Hammell, Jeffrey B. Oberman & William Z. Pentelovitch

### 311 Public Funding and Unallotment – What Happened and What Does It All Really Mean?

Identifying and analyzing the impact that the state budget ultimately may have on the employment issues handled by lawyers representing public sector clients.

Patricia Y. Beety & Gregg M. Corwin

4:00 – 5:00 p.m.

## BREAKOUT SESSION E

Are They Really Independent Contractors? (continued)

Labor and Employment Law Issues in Mergers and Acquisitions (continued)

### 401 FMLA – Basic Law and Practice – Incorporating the 2009 Changes



Repeat of #001

Mary M. Krakow

### 402 Top 17 Wage and Hour Traps for Employers

The risks are real and substantial, but not every ambiguity is a crisis. Every employer, large or small, needs to recognize and fix, from a practical perspective, the most easily overlooked or disregarded vulnerabilities to serious problems under federal and state minimum wage, overtime, payroll records, and rest and meal break laws. How to spot and evaluate them, and how best to realistically remedy them.

Robert R. Reinhart, Jr.

### 403 The Termination Meeting – A Step-by-Step Guide

You know you must terminate, the question is how to do so without inviting lawsuits. This session covers: Planning and executing the termination meeting; Talking points for termination that deter problems and increase comfort and respect; Helpful checklists and more.

Sheila A. Engelmeier

### 404 Minimizing and Managing Risks of Discrimination, Harassment and Retaliation Claims

Prevention is the best medicine. There are practical ways, which this session explores, for companies to reduce their exposure to employment claims. Changes or improvements, some quite minor others more significant, in a company’s personnel practices or policies can have a dramatic practical effect in reducing the possibility of claims or the exposure if such claims arise. Even the most sophisticated company, with well-developed programs and policies, can make improvements to reduce its risk. In this session, experienced outside and inside counsel describe the “pros” and “cons” of specific changes companies can make.

Jennifer A. Dellmuth & Joseph W. Hammell

### 405 Union Organizing Today and the Significant Changes on the Horizon

What are the legal standards and the practices today? How are these rules and practices likely to change as a new National Labor Relations Board is constituted?

Dominic J. Cecere

### 406 Elimination of Bias: Implicit Bias in the Courtroom



1.0 elimination of bias credit applied for

Implicit biases are the plethora of fears, feelings, perceptions, and stereotypes that lie deep within our subconscious, without our conscious permission or acknowledgement. Indeed, social scientists are convinced that we are, for the most part, unaware of them. As a result, we unconsciously act on such biases even though we may consciously abhor them. In this session, Judge Mark W. Bennett discusses the latest social science research on implicit bias, examines how implicit biases affect jury selection, and proposes procedural solutions for alleviating the effects that implicit biases have on trials.

Judge Mark W. Bennett

### 407 Strategic Discovery Practice

Thinking through discovery from beginning to end; how to best use and time interrogatories, requests for admissions, depositions, e-discovery and more.

E. Michelle Drake, Joni M. Thome & David M. Wilk

MODERATOR: Charles F. Knapp

### 408 8th Circuit and Federal District Court Update



Repeat of #210

Cynthia A. Bremer & Steven Andrew Smith

Join us Monday  
at 5:00 p.m. for the  
Annual Reception!

Please join us for complimentary  
hors d’oeuvres and refreshments.  
It’s a fun and relaxing event and a great  
opportunity to meet and visit with  
colleagues, faculty and friends.



# Session Descriptions: Day 2 – Tuesday, May 25, 2010

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

- 2010 Minnesota Update**  
New Minnesota legislation, regulation and cases.  
*Ellen G. Sampson*
- An EEOC Update**  
New developments, directions, and enforcement initiatives.  
*Peggy R. Mastroianni*  
*Associate Legal Counsel, EEOC*  
*Washington DC*
- Other Important New Federal Developments**  
Developments in federal employment law including ADEA, FMLA, immigration and more.  
*Robert C. Boisvert, Jr.*

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

### Step by Step – Employment Investigations from Beginning to End

Investigating workplace complaints and problems is an essential part of a successful employment setting. Done well, investigations can increase employee perceptions of fairness, engagement and generate decisions that are balanced and proportionate. Done poorly, investigations can be demoralizing and increase odds of litigation. This session will take a sweeping look at employment investigations, identifying each essential step and the practice tips to ensure investigations are effective and defensible.

*Fran A. Sepler*

## 10:20 – 11:15 a.m. BREAKOUT SESSION F

### 501 Reverse Networking and Un-Friending – Using Google, Facebook, Social Networking, Public Records and Other Searches to Screen Potential Employees



**Back by Popular Demand**  
**Repeated at #904**

What Internet resources can you use to screen potential employees? What are the limits? What is smart screening and what is illegal? Learn best practices and traps to avoid in this up-to-the-minute review of available resources and their potential uses.

*Howard L. Bolter & Dennis J. Merley*

### 502 Post-Termination Issues – Legal and Practical Considerations

After a termination decision has been carried out, an employer continues to have a number of legal obligations to fulfill (such as final wage payment), must evaluate and consider its own legal rights (for example, the departing employee's compliance with confidentiality or non-compete agreements), and also must be prepared for possible legal action by the terminating employee. This practical session provides you with the tools for critically analyzing and effectively addressing these significant post-termination matters.

*Kathlyn E. Noecker*

### 503 FMLA Leave – The Medical Certification and Recertification Process

What are the tough issues you'll face when your employees bring you their doctor's note? When can you ask for a medical certification? What about re-certifications? What can you do about absences beyond the reasons specified in the certification? This session will discuss how you can use the medication certification as a tool for managing leaves as well as the limits you must respect.

*Ilyse S. Goldsmith*

### 504 International Employment Law Basics for In-House Advisors

With the globalization of the workforce, increasingly, in-house advisors are asked to provide guidance on employment law matters that affect non-U.S. based employees. What works here may not work there and it is important to have a high level understanding of critical differences. This course will provide practical tips for recognizing and managing key legal risks so that you can help steer your organization past pitfalls. Topics will include legal comparisons affecting hiring terms and conditions, works council considerations, performance management, and redundancy strategies with an emphasis on Europe and China.

*Laurie Willard Olson*

### 505 Culture in the Workplace – And Potential Discrimination Issues – EEOC Perspective

Peggy Mastroianni discusses the EEOC perspective on dealing with diverse cultures in your workplace including issues of religion, dress, English only, and more.

*Peggy R. Mastroianni*

### 506 Data Privacy and Security – In-House Counsel Responsibility

Protecting employee data, customer data and other confidential information; What are best practices and what steps are some Minnesota companies taking?

*Jay Cline, Steven G. Rush & Nancy A. Rystrom*

*MODERATOR: Brad T. Bolin*

### 507 2010 FLSA 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*

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today!*

651-227-8266

800-759-8840

[www.minncle.org](http://www.minncle.org)

**508 The 2010 Employment Law Litigators Update**

**Repeated at #708**

This session will bring you up to date on the critical new issues facing both plaintiff and defense employment law litigators in 2010 including the impact of *Iqbal* on pleading and Rule 12 motions, the latest word on e-discovery issues, important employer identity questions, new jury instructions surrounding social networking sites, the U.S. Supreme Court decision in *Gross* and how it changes ADEA cases, the fallout from *Penn Plaza* on arbitration clauses and more. Don't miss this fast paced and critical update on everything new facing the employment law litigator!

*Justin D. Cummins & Sara G. McGrane*

**509 Risky Business: How to Better Value Your Case, Avoid/Win Explosive Verdicts and Maximize Settlement Success**

Hear from the EEOC, seasoned mediators/plaintiff's counsel, and defense counsel on what makes a case worth a lot and what makes it worth very little. Find out what risk factors can lead to explosive jury verdicts and what approaches can lead to successful settlements. This session will include national, regional and local data on settlements and verdicts.

*Martin B. Ho, Sue B. Stingley & Laurie A. Vasichek*  
 MODERATOR: *Gregory J. Stenmoe*

**11:25 – 12:20 p.m.**  
**BREAKOUT SESSION G**

**601 Hiring Basics: Best Practices and Legal Guidelines**

From recruiting materials to background checks and candidate testing to new employee forms and agreements, an effective and legally compliant hiring process is key to organizational success. This session will review the current laws and regulations that govern the hiring process and provide practical strategies for minimizing liability while finding and choosing the right candidate.

*Steven R. Anderson*

**602 Management Decisions and the Human Resources Department – Avoiding or Creating Liability?**

Mistakes by managers can have serious consequences. The HR Department can rectify or exacerbate these problems. Using actual case examples, as well as TV and film clips, this session will illustrate how human resource departments can help companies avoid litigation or increase exposure. Sample memoranda, notes, case experiences and other examples will highlight common mistakes and their potential ramifications. You'll learn practical ways your HR department can help minimize company liability in this fun and fast-paced session.

*Roy A. Ginsburg*

**603 Separation Agreements and Releases: Writing Separation Agreements That Stick**

**Repeated at #906**

Do your separation agreements provide the necessary information regarding employee departures? Do the agreements adequately protect you as the employer? Are your separation agreements enforceable? This session will provide an overview of the key terms and conditions to include in employee separation agreements and will discuss drafting tips to increase the likelihood that the agreements will withstand challenge. The session will cover individual and group terminations and special requirements under Minnesota and federal law.

*Elizabeth A. Papacek*

**604 Absent Again – Chronic Absenteeism and How to Handle It Effectively**

**Back by Popular Demand!**

One of the toughest challenges under the ADA and FMLA can be an employee's medical need for intermittent leaves from work. What are the employer's and the employee's legal rights and obligations? What are effective strategies for handling issues arising out of chronic absenteeism without running afoul of the law?

*Heather C. Fokken & Katherine A. Lawler*

**605 Europe – Key Employment Law Idiosyncrasies and Traps**

Learn to avoid some of the more troubling differences and nuances of European Union employment law including business transfers, employment contracts, restrictive covenants and more! This session will provide an overview to key issues that will save you from problems, conflict and difficult lawsuits.

*Darren G. Gardner & Mark E. O'Sell*

**606 Direct from the EEOC Chicago District Office – Information on Trends, Policy and Initiatives**

The district overseen by the EEOC's Chicago District Office includes Minnesota, North Dakota, South Dakota, Iowa, Wisconsin and Illinois, with Area Offices located in Milwaukee and Minneapolis. EEOC Regional Attorney John Hendrickson from the Chicago Office joins us to discuss "what's happening" with respect to litigation and enforcement directed by that office. Topics will include scope of releases, waivers, consent decree issues, press releases, and more.

*John C. Hendrickson*  
 MODERATOR: *Barbara Jean D'Aquila*

**607 Diversity and Inclusion Initiatives**

In today's rapidly changing workplace, successful companies recognize that effective diversity and inclusion programs are business imperatives. Our panel of diversity professionals and attorneys will discuss employer diversity and inclusion programs – such as employee affinity groups, mentoring programs, and diversity goals and scorecards – and identify ways to manage risk.

*Darnell M. Allen, Kathryn A. Mrkonich-Wilson & William W. Wells, Jr.*  
 MODERATOR: *Liane M. Wong*

**608 A Cooperative Approach to eDiscovery That Works for Both Plaintiff and Defense**

**Repeated at #907**

Michael McGuire mixes both technological expertise and legal analysis and demonstrates the benefits of taking a new, cooperative approach to eDiscovery – an approach endorsed by judges in 26 states and cited in 13 federal court cases. The program will demonstrate real-world, practical examples of how to use this approach in your cases and the benefits you will derive – whether you are plaintiff or defense.

*Michael J. McGuire*

**609 FLSA Litigation – The Hottest Issues in the Hottest Cases**

What are the biggest substantive and procedural issues facing both plaintiff and defense counsel? Learn from some of the nation's best in this can't miss session.

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

**610 Winning and Losing Retaliation Lawsuits**

Retaliation claims are some of the most common and important employment causes of action brought by plaintiff counsel today. Our experienced panel of both plaintiff and defense attorneys will focus on the key elements (and problems) in retaliation cases. What are the strategies this talented group of litigators apply to increase their chances of success?

*Clayton D. Halunen, Linda L. Holstein & Michael L. Puklich*  
 MODERATOR: *Paul J. Zech*

**611 Containing Personnel Costs in Local Government: Current Trends and Legal Implications**

This session will explore the legal issues and strategies for both local government and the unions representing local government employees as they deal with revenue losses. Topics will include negotiating wages and benefits and dealing with downsizing – from layoffs and furloughs to subcontracting. The hidden costs and potential pitfalls of various approaches in both a union and nonunion setting will be discussed.

*Scott M. Lepak*

**701 The Basics of Discrimination and Harassment Claims: Tips for Prevention and Response**

This session will review the basics of discrimination and harassment claims, and provide important recommendations regarding steps employers should take to avoid, respond to, and defend against such claims. You'll learn practical steps for reducing your employers' potential liability exposure.

*Robert C. Castle*

**702 Effective Interviewing – An In-Depth Training**

**2-hour session**

Every interview should have a structure that ensures the highest quality input and output. Each stage of an interview requires different skills and techniques. Experienced investigators know that working through each stage is essential. This session will help participants to understand the strategy for effective investigative interviews – not only what to ask, but when to ask certain questions, how to prepare for the interview, and how to deal with the challenges that emerge during interviews. This session will familiarize you with proven techniques to accomplish all of the goals of an interview – to gather facts, to build confidence in the process, to test credibility and to determine the course of the investigation.

*Fran A. Sepler*

**703 Solving the High-Risk Personality Problem In Your Workplace:**

**A3** (Arrogant, Abrasive, Authoritarian) =

**C3** (Conflict, Complaint, Cause of Action)

**Repeated at #905**

Is this equation familiar to you? Is the difficult personality a common denominator in your workplace? Are you stymied by the calculus of unending conflict? If so, join three experts – management lawyer, plaintiffs' lawyer and executive coach – who have done the "math" of the big personality time and time again. From their very different vantage points, they will assess the unique risks posed in the workplace by personalities dominated by the three As. They will address how to intervene, when to intervene and the consequence of failing to intervene.

*Robert Murney, M. William O'Brien & Melissa Raphan*

**704 Leave for Military Personnel and Their Families – Including New Law**

Learn about new (and existing) obligations for employers with respect to leaves of absences for military personnel and their families under the FMLA, USERRA and Minnesota state law.

*George R. Wood*

**705 Employment Relationships in China**

Your presenters will outline the various forms of employment relationships in China, answer common employment law questions, provide an overview of the Chinese labor contract law, and discuss recent developments relating to unionization, restrictive covenants and other employment issues.

*Kathlyn E. Noecker & Jacqueline R. Rolfs*

**706 Terminating an Employee Shareholder: "What Do You Mean He Expected to Stay Employed for the Rest of His Life?"**

Including shareholder expectations, buy sell agreements, rights/remedies of employee shareholders, what conduct by shareholders may give the employer grounds to terminate their employment, and procedures for bringing/defending employment claims brought by shareholders.

*Ansis V. Viksnins*

**707 California Dreaming – Wage and Hour Pitfalls in the Gold Rush State**

Current and important wage and hour issues facing companies doing business in California; Trying to avoid missteps in the state with the most potential traps for employers.

*Michael Droke & Katherine A. Lawler*

**708 The 2010 Employment Law Litigators Update**

**Repeat of #508**

*Justin D. Cummins & Sara G. McGrane*

**709 Updating Your ADA Litigation Strategies in Light of the New Law**

Recent changes to the ADA have made disability discrimination claims easier to prove. Seasoned litigators discuss the impact of these changes, with a focus on establishing a qualified disability, what constitutes reasonable accommodation and engagement in the interactive process, proving pretext, and the remedies available when prevailing on these claims.

*David J. Duddleston, Leslie L. Lienemann & Joseph J. Roby, Jr.*

*MODERATOR: Lawrence P. Schaefer*

**710 If It's Tuesday, This Must Be Omaha: Handling the Ethics Issues in Multi-Jurisdiction Practice**

**1.0 ethics credit applied for**

Employment attorneys who represent clients in other jurisdictions have to be careful not to cross the line into the unauthorized practice of law. This session will provide a map lawyers can use to avoid crossing into dangerous ethical territory.

*Eric T. Cooperstein*

**711 Whistleblowing in the Public Sector: Winning Ways and Wrongful Woes**

In one of the hottest areas of employment litigation, learn about the evolving legal landscape of whistleblower lawsuits from two seasoned trial lawyers who have handled numerous claims under both state and federal whistleblowing laws. Hear about the various legal differences which arise when handling whistleblower claims in the public sector including the important First Amendment gloss.

*Andrew D. Parker & Marshall H. Tanick*

**Effective Interviewing – An In-Depth Training (continued)****801 The Basics of Employee Recordkeeping**

What are employee "records"? What should be kept? What must be kept? How long? Where should the records be stored: Does everything go into the personnel file? What about tax records, medical records, disciplinary notes, pension and health insurance information? Who can access the files? What privacy rights are in play?

*Douglas P. Seaton*

**802 Navigating the Bermuda Triangle: Practical Guidance on the Intersecting, Sometimes Conflicting Worlds of FMLA, ADA and Workers' Compensation**

**Back by Popular Demand!**

Analysis of the legal questions that arise when ADA, FMLA and workers' compensation laws intersect. 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.

*Penelope J. Phillips*

**803 Assessing the Legality of Pre-Employment Assessments**

Many employers use pre-employment assessments to ensure that they hire and promote the best possible applicants and employees. Such assessments are an invaluable tool to the employer, but also may create a variety of legal risks. The EEOC, other regulatory entities and plaintiffs' class action counsel have focused on pre-employment assessments as a potential point of employer vulnerability under the ADA, Title VII and even the ADEA. This session will assist employers in evaluating their pre-employment assessments, ensuring that those assessments comply with the law and avoiding possible liability.

*Mark J. Girouard & Joseph G. Schmitt*

**804 India – The 10 Most Important Issues Facing U.S. Companies That Engage Workers in India**

Darren Gardner discusses the 10 things that are critical to know when employing or contracting with Indian workers including: restrictive covenants, business transfers, agency worker issues and much more. You'll learn a ton in this fast-paced session. Remember, what you don't know can hurt you.

*Darren G. Gardner & Mark E. O'Sell*

**805 What You Don't Spot Can Hurt You: Benefits Bites for Employment and HR Professionals**

Benefits issues can pop up in many employment/HR contexts. Oftentimes prevention is the best medicine. Discussion will address a variety of benefits related issues including: Owners versus common law employees; Misclassified workers; Eligibility extensions; Sick pay (When is it subject to ERISA?); FMLA and Group Health Plan coverage (Interplay with state continuation and COBRA responsibilities); Coverage versus tax consequences; HSA eligibility for contributions versus distributions; New IRS excise tax reporting requirement.

*Darcy L. Hitesman*

**806 Preserving Electronic Evidence Before Litigation Starts**

**Back by Popular Demand**

Human resources professionals and employment counsel need to know what is considered a trigger for implementing a legal hold and what practical steps to take when implementing a hold. In this session, an experienced attorney will cover the developing legal standards that apply to the preservation of electronic evidence in the pre-litigation context. In addition, you will learn about the technical aspects of litigation holds from consultants who regularly advise plaintiffs and defendants regarding electronic discovery.

*Christine J. Chalmers & Mary T. Frantz*  
MODERATOR: *Alice O'Brien Berquist*

**807 Spotting and Preventing FLSA Landmines Before They Explode**

Time clocking practices, meal break administration, exemption analysis, overtime calculations, tip processing and other details of compensation are the #1 target for legal attack these days. Cases – and lawyers starting them – keep proliferating. Dollar exposure can be staggering. Which policies matter most? What data are the most important to closely monitor? How should training costs be most effectively invested? Plaintiffs' counsel specialized in bringing these claims and management counsel with experience auditing to help protect against them will offer their uniquely valuable perspectives and practical suggestions about how to identify and defuse the most common risks.

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

**808 Whistleblower and Retaliation Claim Update and Strategy**

**Repeat of #109**

*Celeste E. Culberth & John D. Thompson*

**809 Elimination of Bias: Practical Tips for Working with Clients and Employees with Disabilities**

**1.0 elimination of bias credit applied for**

The Legal Director of the Minnesota Disability Law Center discusses the types of disabilities, both physical and mental, that attorneys may encounter when working with clients and employees with disabilities. She will discuss biases that people with disabilities face, and also include practical tips for making a working relationship with a person with disabilities more comfortable and productive for all involved.

*Pamela Hoopes*

**810 Public Sector Open Forum**

A question-and-answer session. Bring your public sector employment law questions to the session for discussion by our expert panel.

*Patricia Y. Beety, Gregg M. Corwin & Scott M. Lepak*

**4:00 – 5:00 p.m.  
BREAKOUT SESSION J**

**901 Wage and Hour Basics – Getting It Right**

**Back by Popular Demand  
Repeat of #101**

*Susan E. Ellingstad & Jeremy D. Sosna*

**902 The ADA and Employee Mental Health Issues – After the New ADA Amendments**

**Repeat of #205**

*Ann Huntrods*

**903 Immigration Recordkeeping – I-9s and E-Verify**

**Repeat of #305**

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

**904 Reverse Networking and Un-Friending – Using Google, Facebook, Social Networking, Public Records and Other Searches to Screen Potential Employees**

**Back by Popular Demand  
Repeat of #501**

*Howard L. Bolter & Dennis J. Merley*

**905 Solving the High-Risk Personality Problem In Your Workplace:**

**A3 (Arrogant, Abrasive, Authoritarian) =  
C3 (Conflict, Complaint, Cause of Action)**

**Repeat of #703**

*Robert Murney, M. William O'Brien & Melissa Raphan*

**906 Separation Agreements and Releases: Writing Separation Agreements That Stick**

**Repeat of #603**

*Elizabeth A. Papacek*

**907 A Cooperative Approach to eDiscovery That Works for Both Plaintiff and Defense**

**Repeat of #608**

*Michael J. McGuire*



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# 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** 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 #308 and #710 each will qualify for **1.0 ethics credit** and that sessions #406 and #809 each will qualify for **1.0 elimination of bias credit**. 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 #308 and #406, you would claim 1.0 ethics credit, 1.0 elimination of bias credit and 11.0 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 course materials. 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 at **www.minncle.org**.

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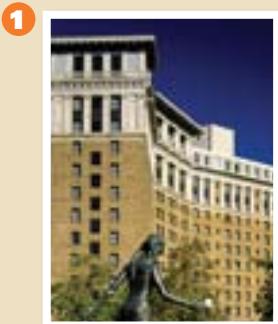
175 West Kellogg Boulevard  
Saint Paul, MN 55102

## P Parking

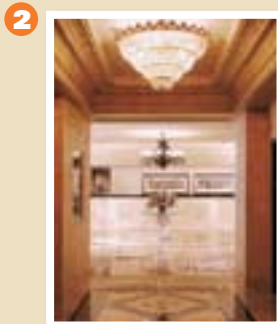
The Institute begins at 8:00 a.m. each day. We encourage commuters to allow plenty of time for rush hour traffic and for parking. Please take special note of the map which indicates the RiverCentre location and adjacent parking lots.

## Hotel Accommodations

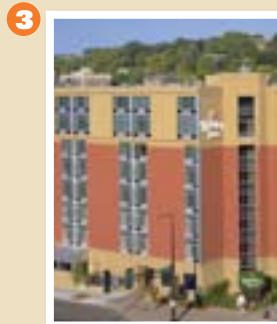
Minnesota CLE has reserved sleeping rooms at the following hotels for Institute attendees. Make your reservations by April 30, 2010 to ensure room/rate availability!



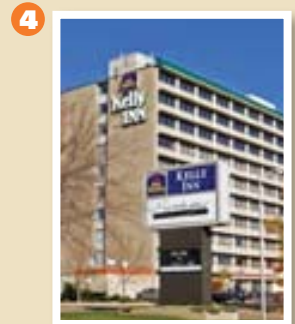
**1 The Saint Paul Hotel – \$140**  
350 Market Street  
651-292-9292  
www.stpaulhotel.com



**2 Crowne Plaza Riverfront – \$124**  
11 East Kellogg Boulevard  
651-292-1900  
www.cpstpaul.com



**3 Holiday Inn St. Paul Downtown – \$109**  
175 West Seventh Street  
651-225-1515  
www.holiday-inn.com/stpaulmn



**4 Best Western Kelly Inn – \$89**  
161 St. Anthony Avenue  
(1-94 & Marion Street)  
651-227-8711  
www.bestwesternstpaul.com

# The 2010 Upper Midwest Employment Law Institute

Monday & Tuesday  
May 24 & 25, 2010  
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 Pass<sup>SM</sup>.  
 Pass # \_\_\_\_\_

### New Lawyer Discount:

- I was first admitted to the bar after May 24, 2007, and have deducted \$60 from the registration fee marked at left.

## Please "✓" appropriate box:

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

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Phone \_\_\_\_\_

Fax \_\_\_\_\_

E-mail \_\_\_\_\_

Attorney License No. (if applicable) \_\_\_\_\_

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[622-10 / jhaj / lmp]

## 2 Choose Your Plenary Session:

- I will attend the "MAIN" plenary session.  
 I will attend the "ALTERNATE" plenary session.

## 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	<input type="checkbox"/> #404
<input type="checkbox"/> #005	<input type="checkbox"/> #105	<input type="checkbox"/> #205	<input type="checkbox"/> #305	<input type="checkbox"/> #405
<input type="checkbox"/> #006	<input type="checkbox"/> #106	<input type="checkbox"/> #206	<input type="checkbox"/> #306 (2-hour session)	
<input type="checkbox"/> #007	<input type="checkbox"/> #107	<input type="checkbox"/> #207	<input type="checkbox"/> #307 (2-hour session)	
<input type="checkbox"/> #008 (2-hour session)	<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"/> #407
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		<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	<input type="checkbox"/> #901
<input type="checkbox"/> #502	<input type="checkbox"/> #602	<input type="checkbox"/> #702 (2-hour session)	<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
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