



Minnesota State Bar Association
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The 39th Annual

Labor & Employment Law Institute

Presented by the Labor & Employment Law Section of the MSBA, the Minneapolis Regional Office of the National Labor Relations Board, the Minneapolis Office of the Equal Employment Opportunity Commission, and Minnesota CLE.

featuring

- EEOC General Counsel David Lopez
- NLRB Deputy General Counsel Celeste Mattina
- Advanced-level sessions on important practice topics
- Analysis of new court decisions, new agency developments, and emerging trends

*All this, and much more, at an **advanced** program for the experienced labor and employment practitioner.*

Friday, November 30, 2012
Minnesota CLE Conference Center
600 Nicollet Mall, Suite 370; Minneapolis

Schedule

8:15 – 8:50 a.m.

CHECK-IN & CONTINENTAL BREAKFAST

8:50 – 9:00 a.m.

WELCOME & INTRODUCTION

9:00 – 10:15 a.m.

Agency Counsel – New Developments and Joint Analysis of Real-World Scenarios

David Lopez, EEOC General Counsel, and Celeste Mattina, NLRB Deputy General Counsel, provide updates on key developments at their agencies. Then Barb D'Aquila, a seasoned practitioner, will moderate a discussion that gets at tough questions in areas such as social media (e.g., when it is protected concerted activity vs. a proper subject of discipline and discharge), confidentiality clauses (e.g., do they violate the NLRA or civil rights laws or otherwise create problems in workplace investigations), application of NLRB- and EEOC-covered laws as to undocumented workers, and mandatory arbitration agreements. Through analysis of real-life situations, Ms. Mattina and Mr. Lopez will highlight and explain their respective agency positions in these areas.

- P. David Lopez
- Celeste Mattina
- Moderator: Barbara J. D'Aquila

10:15 – 10:30 a.m.

BREAK

10:30 – 11:30 a.m.

BREAKOUT SESSION A

1 Courts Weighing In – New and Imminent Developments in Anti-Harassment Law

The U.S. Supreme Court has granted cert. to consider “who is a supervisor” when an employee alleged to have harassed a co-worker is also alleged to be a supervisor. In addition, there have been a number of important recent federal and Minnesota court decisions in the harassment area. Join us for an advanced-level discussion of the implications for discovery, liability, damages, and other key legal issues.

- Justin D. Cummins
- P. David Lopez
- Karen G. Schanfield
- Moderator: Paul J. Zech

2 Capsizing Port Side or Righting the Ship? What Is Being Pursued Before the Board, and What Can We Expect?

The NLRB General Counsel's office is responsible for authorizing the Regional offices to litigate cases involving specific issues. Learn about the cases currently pending before the Board, which involve hot topics and are expected to result in a shift in the law. Participate in a discussion regarding other significant issues and policy objectives that are being pursued by the General Counsel through litigation. In light of these cases and the achieved or anticipated outcomes, is the Agency going too far, or is it attempting to strike the right balance? Join our panel for this session, and stay ahead of the curve with regard to important developments under the NLRA.

- Brendan D. Cummins
- Celeste Mattina
- Michael J. Moberg
- Moderator: Thomas R. Trachsel

11:30 – 11:45 a.m.

DISTRIBUTION OF BOXED LUNCHES

11:45 a.m. – 1:00 p.m.

LUNCHTIME PRESENTATION

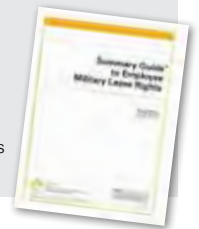
Employing the Disabled American Veteran: Selected Legal and Medical Issues Facing Employers and Employees

Millions of American employees sacrifice their time, energies and sometimes their health defending our country. A panel of legal and medical experts will consider and discuss: PTSD and concussive injuries; ADA accommodation of returning vets in need of that accommodation; the effect of applying for veteran's disability benefits on ADA claims; and USERRA rights.

- Dr. Paul A. Arbisi
- Dr. Nathaniel W. Nelson
- Major Lyndsey M. D. Olson
- Moderator: George R. Wood

BONUS MATERIAL!

All attendees receive – at no extra charge – a copy of Minnesota CLE's *Summary Guide™ to Employee Military Leave Rights* (2012).



1:00 – 1:15 p.m.

BREAK

1:15 – 2:15 p.m.

BREAKOUT SESSION B

3 Union Organizing – Appropriate Units Under *Specialty Healthcare* and More

An advanced discussion of a number of topics relevant to union organizing campaigns, including whether Board review of unit scope issues is now “largely irrelevant” as contended by Board Member Hayes because *Specialty Healthcare & Rehabilitation Center of Mobile* gives unions the power to organize units of their choosing; under what circumstances individuals are 2(11) supervisors if the only indicia of supervisory status are assignment or direction of work, as defined by the Board in *Oakwood Healthcare Inc.*; and whether unions should be more aggressive in requesting that rerun elections be held away from employers' facilities in light of *Austal USA*.

- Richard L. Kaspari
- Timothy B. Kohls
- Moderator: Marlin O. Osthus

4 Advanced Analysis and Issues Regarding Employer Use of Criminal Background Checks/Screening

An advanced discussion of the issues surrounding use of criminal background checks in employment including an in-depth analysis of the EEOC's updated guidance on criminal background checks, compliance with the Fair Credit Reporting Act, and best practices in an ever-changing employment market. The discussion will also cover trends and changes leading to current laws and the societal and business interests in developing appropriate background screening policies.

- Mark A. Haase
- Carl Crosby Lehmann
- Nicholas J. Pladson

5 ADA Amendments: Adapting to Emerging Trends

In the nearly five years since the ADA has been in effect, we have seen a new focus on such issues as qualification, direct threat, and the interactive process of reasonable accommodation. This session will examine EEOC actions and case law to trace the emerging ADA trends and their strategic implications for plaintiff and defense counsel.

- Robert C. Boisvert
- Kathryn M. Engdahl

Faculty & Planners

- Member of Institute Planning Committee

Paul A. Arbisi, Ph.D. ABAP, ABPP, L.P.
Private Practice
Staff Psychologist, Minneapolis VA Medical Center
Professor, Depts. of Psychiatry and Psychology, University of Minnesota

Carl Crosby Lehmann
Gray Plant Mooty
Minneapolis

Jeanette M. Bazis
Greene Espel PLLP
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Celeste Mattina
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Robert C. Boisvert
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- **Michael J. Moberg**
Briggs & Morgan, P.A.
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Cynthia A. Bremer
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
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Twin Cities Neuropsychology Partners, LLC
Assistant Professor, University of Saint Thomas
Minneapolis

Nichole Burgess-Peel
NLRB
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Major Lyndsey M. D. Olson
Minnesota National Guard
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- **Gregg M. Corwin**
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- **Justin D. Cummins**
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- **Richard A. Ross**
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Barbara J. D'Aquila
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Ellen G. Sampson
Leonard, Street and Deinard
Minneapolis

- **Kathryn M. Engdahl**
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Minnesota Council on Crime and Justice
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- **Clayton D. Halunen**
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U.S. Attorney's Office
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Brian E. Wojtalewicz
Wojtalewicz Law Firm, Ltd.
Appleton

Hon. Jeffrey J. Keyes
U.S. District Court – District of Minnesota
Saint Paul

George R. Wood
Littler Mendelson PC
Minneapolis

Timothy B. Kohls
Allina Hospitals and Clinics
Minneapolis

Paul J. Zech
Felhaber Larson Fenlon & Vogt PA
Minneapolis

2:15 – 2:30 p.m.

BREAK

2:30 – 3:30 p.m.

BREAKOUT SESSION C

6 Employee Protected Concerted Activity – Analyzing the Factually Difficult Case

Half of the cases most recently litigated by Region 18 involve allegations that employers illegally discharged employees due to their protected concerted – and not union – activities. Currently pending before the Eighth Circuit are three petitions for enforcement of Board Orders (two involving the same employer) in Region 18 cases where the Board found employers illegally discharged employees due to their protected concerted activity. Recently Region 18 settled a case for in excess of \$120,000 where a hospital terminated a technician because (in the Region's view) of his protected concerted activity. In this advanced-level session, a Region 18 attorney and a management lawyer team up to provide their perspectives and analysis of factually difficult cases.

- Nichole Burgess-Peel
- Richard A. Ross

7 The False Claims Act: The Basics and Beyond

Panelists will discuss the FCA from the perspective of relator's (plaintiff's) counsel, defense counsel, and government counsel. The discussion will include the basic features of the FCA, as well as recent amendments to the Act.

- David P. Graham
- D. Gerald Wilhelm
- Brian E. Wojtalewicz

8 Ethics: When Employment Litigation Involves Executives

1.0 ethics credit to be applied for

Attorneys have an ethical duty to protect their clients' privileged information, and we also have ethical constraints regarding how we may obtain evidence in the litigation context. This session explores the particular challenges that arise when that employment litigation involves a current or former executive.

- Cynthia A. Bremer
- Clayton D. Halunen
- Hon. Jeffrey J. Keyes
- Moderator: Jeanette M. Bazis

3:30 – 4:00 p.m.

ANNUAL INSTITUTE NETWORKING BREAK

Join your colleagues for hors d'oeuvres and beverages. Chat, relax, network and then join us in the auditorium for the final session of the day.

4:00 – 5:00 p.m.

CONCLUDING PLENARY

The Lightning Round: More New Developments

A can't-miss discussion of more important developments including: the 2012 U.S. Supreme Court decisions related to health care reform, notice regarding special assessments in the public sector union context, and "outside salesmen" under the Fair Labor Standards Act; the NLRB's position on employee handbooks; and the Uniform Arbitration Act.

- Stephen F. Befort
- Gregg M. Corwin
- Ellen G. Sampson



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**Labor & Employment
Law Institute**

Friday, November 30, 2012
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DATE AND LOCATION

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CREDITS

Minnesota CLE is applying to the Minnesota State Board of CLE for **6.5 CLE credits, including 1.0 ethics credit for attendees of breakout session #8.** The maximum total amount of CLE credits that may be reported for this Institute is 6.5. We are also applying to the MSBA for **6.5 labor and employment specialist credits.**

NEW LAWYER SCHOLARSHIP PROGRAM

In recognition of the challenges facing lawyers entering the profession, Minnesota Continuing Legal Education has established a scholarship program for unemployed and underemployed lawyers admitted less than three years. Those wishing to apply for such assistance should contact Grant at **651-254-2111** or **gdavies@minncle.org** for details.

CANCELLATION / NO-SHOW POLICY

Paid registrants who cancel their registration at least 3 business days before the program will receive a full credit on their account; if fewer than 3 business days, a \$25 administrative fee will be deducted. Paid registrants who fail to attend will receive the written materials. Passholders may purchase the course materials at 50% of the full retail price.

ACCOMMODATION

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

QUESTIONS?

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