

Fairness at Work.

To those facing workplace, labor, housing or civil rights problems, MILLER O'BRIEN CUMMINS offers quality, client-focused representation ranging from tactical advice and counsel to negotiation and litigation services.

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MILLER O'BRIEN CUMMINS: New Name, Same Mission

Rich Miller says Farewell

Rich is among a rare breed of lawyers who can claim to have practiced labor law for their entire career. After 40 years of advocacy for the labor movement, Miller retired in 2007. Remaining with the firm in of-counsel capacity, Rich is passing the torch to Brendan Cummins. Miller-O'Brien is now **MILLER O'BRIEN CUMMINS** (MOC).

Through its predecessors, MOC traces its genealogy as workplace experts to the 1940s and the dawn of worker rights legislation in the United States. Sam Sigal, who passed away in 1995, was one of Minnesota's first and longest practicing labor lawyers. He retired from Miller-

O'Brien in 1990 after 55 years in the labor trenches. Rich and Sam were in practice together since the 1960s. In 1985, Miller joined forces with Bill O'Brien.

Miller's roots and influence in the labor movement have been wide and deep. He has been the driving force behind the longest-standing union-side labor practice in Minnesota. When combined with MOC's comprehensive employment law practice, the traditional labor law work rounds out the full-service character of MOC's workplace focus.

For four decades Miller cultivated and nurtured hundreds of labor clients in

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Around the Firm

MOC, led by **Brendan Cummins**, has brought the first lawsuit in Minnesota, and one of the first of its kind in the country, under the newly amended prevailing wage law. In 2007, the Minnesota Legislature amended the law to include a private-attorney-general provision, which allows workers to sue employers that fail to pay the prevailing wage on state-financed construction projects. MOC has sued Cole's Electric in Blue Earth County on behalf of construction workers seeking to compel the employer to comply with the

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Top left to right: Richard A. Miller, Nicole M. Blissenbach, Kelly A. Jeanetta, Brendan D. Cummins, Robert J. Alfton; **Bottom left to right:** Danielle LeClair, Bill O'Brien, Margaret Luger-Nikolai, Justin D. Cummins.

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many industries, including construction, health care, property services, public utilities, maintenance, entertainment, printing, and the public sector. MOC is also counsel for the Minnesota AFL-CIO, the Minnesota State Building and Construction Trades Council, as well as the St. Paul and Minneapolis Building Trades Councils.

Miller was also the sage advisor and visionary behind the most significant labor-side strategic initiatives in Minnesota in the last 20 years. For instance, it was Miller's initiative that placed Minnesota's labor community far ahead of the national curve in the use of Project Labor Agreements, Market Recovery Programs, and more recently, Voluntary Recognition Agreements. Rich retired as the 2007 co-recipient of the Minnesota Bar Association's *Leonard Lindquist Distinguished Service Award for Labor and Employment Law*.

With his wife of 47 years, Sylvia, Rich intends to spend the summer months at their cabin on the Gunflint Trail. During the winter, Rich and Sylvia's address will be in Tucson, Arizona which is also the home of daughter, Julia. From Tucson, the Millers will visit their son, Allen, daughter-in-law, Carolyn, and two grandchildren in Denver for ski vacations.



Brendan Cummins Ascends

After working in tandem with Rich and Bill for the last decade, Brendan is now poised to lead the Firm's labor practice. A graduate of Yale Law School, Cummins clerked for the United States Court of Appeals, Eleventh Circuit, before joining MOC. Fluent in Spanish, Cummins has worked tirelessly for worker justice, including immigrants, and strives to respond to the needs of Minnesota's changing workforce. He has done considerable volunteer work for human rights, including seven years of service on the board of the Resource Center of the Americas and active involvement with the Interfaith Center for Worker Justice since its inception.

Brendan has focused his energies lately where Labor's need is greatest – on organizing, developing innovative legal strategies to help workers build power, including numerous state and local legislative initiatives.

"Brendan is helping to tailor our capabilities to meet the changing needs of the Minnesota worker," says partner Bill O'Brien. "He links labor's past with labor's future."

Around the Firm

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law. **Minnesota Lawyer** covered the story and offered this quote from Brendan: "the workers' lawsuit is an important step toward restoring the public trust, protecting public safety, and ensuring high quality work on public projects."

Bill O'Brien has been accepted for membership into the **College of Labor and Employment Lawyers**.

Membership is by invitation and honors those lawyers who have, through long performance, demonstrated that they represent the highest professional qualifications, expertise, ethical standards, and leadership in the employment relations field.

Kelly A. Jeanetta continues to represent new immigrants, disabled individuals, and other disenfranchised employees in their quest for equal pay, opportunity and freedom from workplace hostility. She also represents white collar employees looking for an even playing field in their employment negotiations. In addition, Kelly has taken the reins of the Minnesota Chapter of the National Employment Lawyers Association. Minnesota NELA's mission is to help attorneys in the State of Minnesota who are representing employees against the greater resources of their employers. As **President of Minnesota NELA**, Kelly is working to promote the professional development of members through sharing information

and tactical ideas, publications, technical support, and educational programs.

In another first-of-its-kind, MOC has sued a large Minnesota construction contractor in a class action discrimination suit on behalf of exploited Latino workers. **Bill O'Brien** and **Justin D. Cummins** are directing the litigation in this case where the workers were paid day rates at a fraction of the pay of white workers performing similar work. The workers, often paid in cash, worked twelve hour days with no overtime pay and few breaks.

Justin is also **Vice Chair of the Minnesota State Bar Association's Labor & Employment Section**. He recently obtained a third judgment in landmark fair housing litigation, *SternJohn v. Kreisler, et al.* He is also the 2007 recipient of the **Aeon Building Community Award** for his 12 years of service on that Board (4 years as Chair) and his other work promoting affordable homes for all in Minnesota.

Sign of the Times

"The trouble with blaming powerless people is that although it's not nearly as scary as blaming the powerful, it does miss the point. Poor people do not shut down factories ... Poor people didn't decide to use 'contract employees' because they cost less and don't get any benefits."

— Molly Ivins, 1944-2007

In the Public Sector

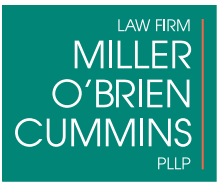
MOC's public sector work has generated two notable arbitration victories on behalf of the IUOE. In a case against the City of Northfield, Arbitrator Joseph Daly awarded all relief requested by the Union in a very important pay dispute. The City had adopted a multiple step pay plan for its non-union employees providing for annual COLA increases, as well as step and merit increase to employees meeting performance measures. The Union agreed to the same pay plan for bargaining unit employees. When the contract expired, however, and as bargaining for a successor contract began, the City unilaterally froze all wages, discontinuing all adjustments. **Bill O'Brien** and **Meg Luger-Nikolai** argued that, until a new plan is bargained, the City is obligated to continue all COLA, step and merit adjustments. Arbitrator Daly agreed and ordered the City to implement 2007 and 2008 COLA and step increases to all unit members, as well as merit increases for the three year period, 2006 – 2008.

Bill and **Meg** secured a second important victory where the Chaska School District attempted to unilaterally remove more than a dozen bargaining unit positions in an effort to create a new level of supervisors. Arbitrator Carole Berg O'Toole delivered a strong and decisive award, finding the School District in violation of the contract and ordering all of the work returned to the bargaining unit.

Law Alert

Recent Supreme Court decisions that have narrowed the scope of civil rights protections have spurred Congress into action. Two bills in particular, each authored by the resurgent Senator Edward Kennedy, seem to have legs. One of Kennedy's bills, *The Fair Restoration Act*, is aimed at the high Court's decision in *Ledbetter v. Goodyear Tire Company, Inc.* Lilly Ledbetter was a supervisor at Goodyear. As a result of smaller raises over several years, she learned that she was paid less than her male peers. The conservative majority ruled that Ms. Ledbetter had failed to meet the 180-day filing deadline for an EEOC complaint, concluding that the deadline began running at the first instance that the Company gave her a smaller raise. Kennedy's bill remedies this folly by reinstating the long-standing "paycheck rule" which held that a discrete act of discrimination occurs with the issuance of each pay check and, therefore, restarts the statute of limitations clock.

Kennedy's other bill – also sponsored by little known Senators Obama and Clinton – *The Civil Rights Act of 2008*, is designed to overrule the Supreme Court's decision in *Alexander v. Sandoval* which said that individuals may not challenge on discrimination grounds federally funded programs that have a discriminatory effect, unless they also prove discriminatory intent. The bill also gives students protection from sex harassment in school comparable to the protection that employees have at work.



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About the Firm

The attorneys of MILLER O'BRIEN CUMMINS, PLLP have been identified as among the nation's best in *The Best Lawyers in America* and *The Guide to Leading American Attorneys*. Not surprisingly, they're also recognized as among Minnesota's best by *Minnesota Law & Politics* and *Minnesota Lawyer*.

They are trial lawyers with extensive experience in termination, discrimination, harassment, and retaliation cases. They have successfully pursued fair employment and fair housing claims on behalf of multiple plaintiffs, as well as national class-action litigation.

MOC's lawyers are seasoned tacticians, offering strategic advice and counsel in negotiations concerning severance packages, employment agreements, as well as non-compete and non-solicitation contracts.

MOC has represented Minnesota's principal labor organizations over the past 65 years. Their lawyers have authored numerous articles in national and state law journals and speak regularly on employment, civil rights, and labor topics. Several of MOC's attorneys are fluent in Spanish.

"You spend most of your waking hours, not with family or friends, but at work. Shouldn't you expect —shouldn't we all expect—to be treated fairly at work? At MILLER O'BRIEN CUMMINS we demand fairness at work."

— Bill O'Brien

"Women are sometimes denied promotions and other career enhancing opportunities based on stereotypical notions about their ability to balance work with home. Some call it "mommy tracking." We call it discrimination."

— Kelly A. Jeanetta

"As lawyers for workers we are practical idealists, mindful of the economic and political realities we face, but willing to dream of something better."

— Brendan Cummins

"Through the litigation of employment and civil rights cases, we tackle some of society's most complex legal, economic and social problems. In the face of these challenges, we stand in solidarity with our clients to make the workplace and society more just."

— Justin Cummins