

The Employee Rights Advocacy

INSTITUTE

For Law & Policy

2009 Annual Report

The Institute's mission is to advocate for employee rights by advancing equality and justice in the American workplace.

ABOUT THE INSTITUTE

The Employee Rights Advocacy Institute For Law & Policy (The Institute) was established in February 2008 as the related nonprofit public interest organization of the National Employment Lawyers Association (NELA) as part of NELA's 2008-2013 Strategic Plan. NELA and The Institute share a common mission of advocating for employee rights by advancing equality and justice in the American workplace. Working hand in hand, NELA and The Institute seek to create a future in which workers will be paid at least a living wage in an environment free of discrimination, harassment, retaliation, and capricious employment decisions; employers will fulfill their promises to provide retirement, health, and other benefits; workers' safety and livelihood will not be compromised for the sake of corporate profit and interests; and individuals will have effective legal representation to enforce their rights to a fair and just workplace, adequate remedies, and a right to trial by jury.

In accomplishing its mission, The Institute utilizes a multi-disciplinary approach in combination with innovative legal strategies, policy development, grassroots advocacy, and public education. The Institute's programmatic activities include:

- A National Litigation Strategy Project devoted to combating inequality and injustice in the workplace;
- The Paul H. Tobias Attorney Fellowship Program, which offers a new lawyer who embodies the tireless spirit of Paul Tobias, NELA's Founder, the opportunity to work on cutting-edge projects at The Institute;
- The Employee Rights Advocacy Fellowship Program, which provides law students and new lawyers the opportunity to work in private plaintiff's employment law firms across the country, thereby cultivating the next generation of employee rights advocates;
- The Employee Rights Advocacy Scholarship Program, which enables public interest, legal services, and private lawyers who otherwise could not afford to attend NELA's renowned continuing legal education programs the opportunity to do so;
- Development of direct service educational programs and publications for underserved constituencies;
- Public education relating to eliminating forced arbitration of employment claims, abolishing the employment at-will doctrine, ensuring a fair and independent judiciary, and other workers' rights issues; and
- Non-partisan research and development of important issues affecting the American workplace.

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The Employee Rights Advocacy
INSTITUTE
For Law & Policy

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FROM THE EXECUTIVE DIRECTOR

On behalf of the Board of Directors and staff of The Employee Rights Advocacy Institute For Law & Policy (The Institute), I am pleased to present The Institute's 2009 Annual Report. Looking back on what we have accomplished since The Institute was founded just two years ago, I am filled with both pride and gratitude. The Institute has taken important strides in achieving its mission of advancing equality and justice in the American workplace. We also know that none of our work would be possible without the tremendous support we have received from a growing network of individuals, law firms, foundations, and coalition partners that share our unwavering commitment to employee rights. For all of us, I extend our heartfelt thanks to each of you for helping to guarantee that our nation's promise of equal justice under law is a reality for all workers.

The Institute was created by the National Employment Lawyers Association (NELA) to expand its reach beyond the community of employee rights lawyers. Indeed, The Institute reflects the part of NELA's identity which is equally important to accomplishing our shared mission—its "civil rights and advocacy" side. Generous *cy pres* awards, designated by NELA members, allowed us to launch The Institute in 2008, and NELA members are serving in key volunteer roles at The Institute, providing leadership, expertise, experience, and countless hours of service to support The Institute's programs. Working hand in hand, The Institute and NELA are having an even greater impact on improving legal and workplace conditions for employees around the country.

While in 2008 we laid the groundwork for The Institute to emerge as a strong and vibrant organization, in 2009 we focused on developing our programs to further workers' rights. With a major grant from The Public Welfare Foundation, The Institute released, in collaboration with Public Citizen, a "National Study of Public Attitudes on Forced Arbitration." This significant public opinion research on critical issues affecting America's workers found that a majority of Americans opposes the practice of forced arbitration, regardless of their gender or political affiliation. The study is being used by The Institute and our allied partners to promote national legislative and public policy reforms prohibiting forced arbitration, a prevalent practice imposed by employers on workers to deny them access to the courts.

We have been devoting much of our efforts to shaping the National Litigation Strategy Project (NLSP) as The Institute's first core program devoted to combating inequality and injustice in the workplace. In 2009, The Institute established a NLSP Task Force, comprised of NELA members, to guide its activities. Keeping in mind NELA/The Institute's goals of ensuring adequate remedies for violations of workers' rights and preserving the right to a jury trial, the Task Force has targeted the abuse of summary judgment in employment litigation as the NLSP's focus.

In 2009, The Institute generated sufficient funding through *cy pres* awards and individual donations to appoint its first Paul H. Tobias Attorney Fellow, who joined The Institute in January 2010. Named after NELA's Founder, The Paul H. Tobias Attorney Fellowship Program offers a new lawyer who embodies Paul's generous spirit and commitment to employee rights the opportunity to work with The Institute for two years on cutting-edge initiatives such as the National Litigation Strategy Project.

Another goal of The Institute is to increase the number of employee rights lawyers providing high quality legal representation through The Employee Rights Advocacy Scholarship Program. So far, we have awarded nearly \$40,000 (about \$20,000 per year) in scholarship assistance to public interest, legal services, and private lawyers who otherwise could not afford to attend NELA's highly acclaimed continuing legal education programs, including NELA's Annual Conventions.

As we embark on The Institute's third year, we are excited by the many opportunities we have to advance equality and justice in the American workplace through The Institute. We thank you for your support of our work and welcome your continued involvement.

A handwritten signature in black ink that reads "Terisa E. Chaw". The signature is fluid and cursive.

Terisa E. Chaw
Executive Director



PRESIDENT'S CORNER

As we go to press with our 2009 Annual Report, I am excited about the amazing opportunities The Employee Rights Advocacy Institute For Law & Policy (The Institute) is seizing to advance the cause of workers' rights throughout the country. We launched The Institute with the determination to alter dramatically the playing field for employees—to make our dream of equality and justice in the American workplace a reality. And we are making real progress.

This Annual Report documents The Institute's impressive 2009 accomplishments. As our Executive Director Teri Chaw points out, The Institute's first two years were devoted to laying a solid foundation for The Institute to be a full partner with its sister organization, the National Employment Lawyers Association (NELA), in our common cause. As we move forward, The Institute is developing its identity as another strong voice for equality and justice.

In early 2010, NELA and The Institute jointly hired our first Director of Development, Leah A. Hofkin, to lead the expansion of our fundraising programs, including support from individuals, *cy pres* awards, planned giving, and grants. Building a robust development platform is necessary to our ability to carry out our bold agenda. Leah is not alone in doing double-duty for The Institute and NELA; most of the staff divides their time between both organizations. On behalf of The Institute Board of Directors, I extend our gratitude to our truly extraordinary staff.

Thanks to the generosity of our donors, The Institute took another major step forward with the appointment in January 2010 of Matthew C. Koski as our first Paul H. Tobias Attorney Fellow. Matt is extensively involved with the National Litigation Strategy Project (NLSP), furthering efforts to end summary judgment abuse and remedy the U.S. Supreme Court's decisions in *Ashcroft v. Iqbal*, which dramatically altered the pleading standard in civil cases, and *Gross v. FBL Financial Services, Inc.*, which imposes a higher burden of proof on workers who have been discriminated against on the basis of age.

With our Paul H. Tobias Attorney Fellow on staff, we now have someone who is helping us do all the things we need to do to combat summary judgment abuse by employers—doing the research, conducting the surveys, and interviewing the judges, the academics, the opposition, and our own NELA members—whatever it takes. The Institute currently is conducting a survey of NELA members to learn more about the obstacles employee rights lawyers confront in summary judgment. It also asks NELA members to identify good as well as bad summary judgment decisions and to share best practice tips for overcoming summary judgment. The survey will provide empirical evidence to support The Institute's goal of significantly reforming summary judgment practice.

Following The Institute's 2009 "National Study of Public Attitudes on Forced Arbitration," The Institute also is pressing forward with our commitment to limit forced arbitration. In April 2010, The Institute joined a coalition of organizations, including NELA, the Service Employees International Union (SEIU), the Legal Aid Society – Employment Law Center (LAS-ELC), the National Employment Law Project (NELP), and the Women's Employment Rights Clinic at Golden Gate University School of Law (WERC) in submitting an *amicus* brief in support of respondent Antonio Jackson in the U.S. Supreme Court case of *Rent-A-Center v. Jackson*.

As President of The Institute, I echo Teri's invitation to you to join us in our work and underscore the deep appreciation we all share for your support of The Institute. Working together, there is no limit to what we can achieve.

Bruce A. Fredrickson
President

PROJECT TO ASSESS PUBLIC SUPPORT FOR STRONGER ENFORCEMENT OF WORKPLACE PROTECTIONS

In 2009, The Institute received a major grant from the Public Welfare Foundation for a Project to Assess Public Support for Stronger Enforcement of Workplace Protections. The Project enabled The Institute to conduct public opinion research on two critical areas of particular import to workplace protections and rights:

- barriers to private enforcement of workplace rights, specifically forced arbitration imposed by companies against workers and consumers; and
- the role of government oversight and enforcement of workplace protections.

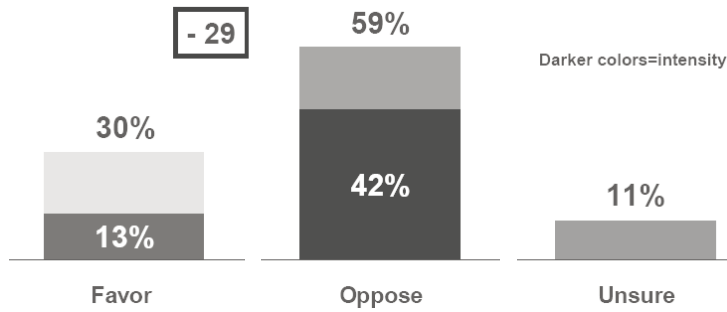
The Institute retained the nationally renowned firm Lake Research Partners to conduct the public opinion research for the Project. In addition, the National Employment Lawyers Association, Public Citizen, and The Institute's coalition partners played a significant role in the forced arbitration component of the Project. The groundbreaking public opinion research assisted The Institute and its coalition partners on numerous levels with respect to forced arbitration:

- identifying an effective communications strategy for advocates;
- generating interest among key audiences; and
- serving as a catalyst for new and more sophisticated approaches to public advocacy to achieve public policy reform.

As reflected below, The Institute's survey of 800 likely voters nationwide found that a majority of Americans opposes the practice of forced arbitration. Other significant findings include:

- A solid majority of Americans (59%) opposes forced arbitration clauses in the fine print of employment and consumer contracts, including both men and women, as well as majorities of Democrats, Independents, and Republicans.
- Similarly, strong majorities (59%) support the Arbitration Fairness Act, a bill pending in Congress that would outlaw the practice of forced arbitration. Support for the Act also crosses traditional gender and political lines.
- Even after voters hear arguments in favor of, and opposed to, forced arbitration, opposition to the practice holds firm. Just one-third of the electorate supports the practice.
- Roughly three-quarters of Americans believe they can sue an employer or company should they be seriously harmed or have a major dispute arise—even if they are bound by forced arbitration clauses. (Unfortunately, individuals who are subject to forced arbitration cannot resolve their claims in court.)
- Most Americans are unaware of the rights taken away from them by forced arbitration clauses. Approximately two-thirds cannot remember seeing anything about forced arbitration in either Terms of Employment or Terms of Agreement for goods and services.

FAVOR/OPOSE BINDING MANDATORY ARBITRATION



With respect to the component on the role of government oversight and enforcement of workplace protections, the Project provided valuable research to support ongoing efforts to secure additional workplace and consumer protections. In many ways, The Institute views this public opinion research as one key “missing link” to policy reform. The reform community has had nothing comparable to the inordinately large market research and advertising budgets used by corporations over the past several years to help reinforce a general negative perception of government regulation and private lawsuits. The work product resulting from the Project provided advocates a much needed analysis of new trends in public attitudes on complex and shifting policy terrain. It also supplied important insights into the most persuasive arguments and messages as well as the most persuadable audiences for reaching our policy objectives. Key reforms and public opinion identified by The Institute’s research include:

- Greater public input into the regulatory process, including balancing the interests of businesses and the public.
- More checks and balances, particularly on big business. Small businesses, on the other hand, are the “good guys” and need more freedom to operate.
- Limit the influence of special interests and corporate lobbyists in the process.
- A time frame for regulations that meets the needs of the public; regulations should not be hastily conceived, nor should they take five years when public health or safety is in jeopardy.
- Corporations should never have veto power over proposed regulations.
- There should be more public disclosure of proposed regulations, including the costs and benefits.
- One cannot put a price on human life, or on intangibles such as the quality of life.
- Preventing harm is far preferable to administering triage after disaster strikes, though there are limits to the principle—namely, that agencies must provide evidence that a risk of serious harm exists, and costs should not outweigh benefits to the public.

Participants saw the greatest role for government oversight and protection in areas where the public’s well-being is at risk of serious harm—physical or financial.

The Institute is grateful to the Public Welfare Foundation and especially to our program officer J. Robert Shull for his guidance and support. In addition, The Institute extends its appreciation to Public Citizen and Lake Research Partners for their contributions to this Project.

THE NATIONAL LITIGATION STRATEGY PROJECT

As one of The Institute's core programs, the National Litigation Strategy Project (NLSP) is devoted to combating inequality and injustice in the workplace. In 2009, The Institute established a NLSP Task Force, comprised of NELA members, to guide its activities. Keeping in mind NELA/The Institute's goals of ensuring adequate remedies for violations of workers' rights and preserving the right to a jury trial, the NLSP's focus is to guarantee that individuals whose workplace rights are violated have their day in court by ending summary judgment abuse by defendant-employers and unwarranted summary judgment dismissals by judges. After deciding to focus The Institute's efforts on reforming the abuses of summary judgment practice in federal court, the Task Force held meetings in September and December 2009 to identify how to achieve this objective. The Task Force developed strategies that would effectively utilize the experiences of its members and those of NELA, The Institute's related professional organization, to inform the types of initiatives the NLSP is uniquely positioned to pursue. In addition, the Task Force identified numerous sources of empirical research that will be useful in understanding the current state of summary judgment practice and will help provide a framework for combating its abuse. In 2009, the National Litigation Strategy Project conducted an initial survey about summary judgment abuse and began laying the groundwork for a national symposium on the subject.

Summary Judgment Survey

The Institute will be developing strategies to challenge, reduce, or eliminate the use of so-called "problem doctrines" that trial courts are using to grant summary judgment at unprecedented rates against workers whose rights have been violated. The Institute surveyed attendees of NELA's 2009 summary judgment seminar about their attitudes and experiences with summary judgment. The results of this survey will be used as the basis for a broader survey on summary judgment practice to be administered to NELA members in mid-April 2010. The survey is designed to: (1) identify the legal doctrines that have the greatest impact on employment cases to enable The Institute to prioritize our efforts in developing an overall strategy to combat them; and (2) provide information about employee rights lawyers' experiences with the summary judgment process to assist The Institute in developing effective strategies.

Symposium on Summary Judgment

In addition to providing empirical evidence to support the NLSP's goal of significantly reforming summary judgment practice, the Task Force has begun to organize an academic symposium dedicated to examining summary judgment in employment cases. We anticipate that The Institute will host the symposium in 2011.

National Litigation Strategy Project Task Force

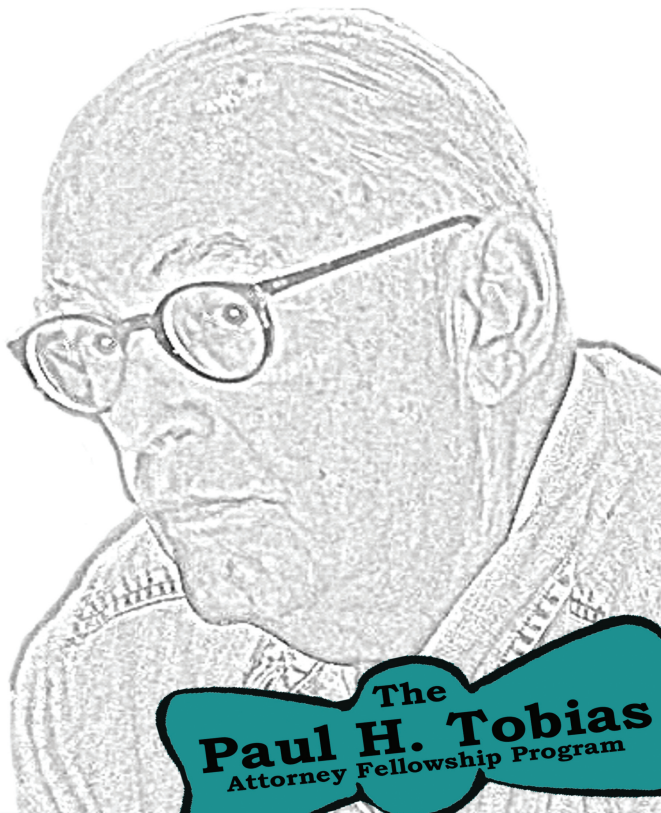
Co-Chairs: Diane S. King (CO)
David L. Lee (IL)

Staff: Rebecca M. Hamburg, Director of Programs
Matthew C. Koski, Paul H. Tobias Attorney Fellow

Members: Alice W. Ballard (PA)
Professor Robert Belton (TN)
Terisa E. Chaw (CA)
Stephen Z. Chertkof (DC)
Bruce A. Fredrickson (DC)

Alicia K. Haynes (AL)
Thomas J. Henderson (DC)
Donna R. Lenhoff (DC)
Victoria W. Ni (CA)
Professor Eric Schnapper (WA)

The Employee Rights Advocacy
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The Institute is pleased to announce that our generous donors collectively contributed sufficient funding to support the January 2010 appointment of our first Paul H. Tobias Attorney Fellow. The Attorney Fellow, Matthew C. Koski, works in The Institute's San Francisco office on developing the National Litigation Strategy Project, participating in *amicus curiae* briefs, engaging in public policy and educational initiatives, and other activities that advance equality and justice in the American workplace.

The Paul H. Tobias Attorney Fellowship is named for Paul H. Tobias, the founder and first Executive Director of the National Employment Lawyers Association (NELA). For over fifty years, Paul has inspired countless employee rights advocates through his pioneering and tireless contributions to the field of plaintiff's employment law. To cultivate the next generation of employee rights advocates, The Institute created the Paul H. Tobias Attorney Fellowship Program. The Fellowship offers a lawyer with at least two years of legal experience, and who embodies Paul's spirit, the opportunity to work on cutting-edge projects at The Institute.

A full list of the founding supporters of The Paul H. Tobias Attorney Fellowship Program may be found on page 10 of this report.

The Employee Rights Advocacy Scholarship Program was created in 2008 to expand access to continuing legal education for public interest, legal services and private lawyers, and law students who otherwise could not afford to further their training in employee rights advocacy.

THE EMPLOYEE RIGHTS ADVOCACY SCHOLARSHIP PROGRAM

Since the launch of the Scholarship Program, The Institute has joined with the National Employment Lawyers Association (NELA) to forward the organizations' shared priority to ensure that more workers receive high quality legal representation through the education of their advocates. NELA provides renowned continuing legal education specifically targeted to attorneys who represent employees in cases involving employment discrimination and other employment-related matters, making the collaboration with The Institute's Employee Rights Advocacy Scholarship Program a perfect partnership of access and education.

"I feel that had I not attended this training, my clients would have less chance of getting the relief they seek."

In 2009, The Institute provided a total of \$19,666.98 in scholarship assistance for all three of NELA's in-person continuing legal education programs: "Taking And Defending Depositions In Employment Litigation," the 2009 Twentieth Annual Convention, and "Surviving Summary Judgment In Employment Litigation." Over two dozen participants received financial assistance from the Scholarship Program, including:

- 17 public interest and legal services attorneys;
- 6 private attorneys; and
- 3 law students.

"As a new attorney and as an attorney at Legal Aid with only one colleague who also practices employment law, it was wonderful and useful to be surrounded by so many experienced NELA attorneys."

The 2009 scholarship recipients hail from fifteen different states and the District of Columbia, taking their training back to communities spread from Washington State to Massachusetts and points all along the way.

The Employee Rights Advocacy Scholarship Program would not have been possible without the generous contributions of the following institutional donors:

"I cannot thank the scholarship committee enough for this invaluable opportunity. I learned so much and am in a much better position to strategize prosecuting my employment cases. I feel re-energized and I will build upon the friendships and networking opportunities I gained."

- The Denise Abrams and David Harrington Fund
- BNA Books
- Kazan, McClain, Abrams, Fernandez, Lyons, Greenwood, Harley & Oberman Foundation, Inc.

The Institute gratefully acknowledges their support of The Employee Rights Advocacy Scholarship Program.

The Institute gratefully acknowledges the generosity of the following individuals, law firms, organizations, and foundations that made contributions to support the work of The Institute since it was established in 2008. The giving levels listed below reflect donors' combined contributions for calendar years 2008 and 2009.

Unrestricted Contributions

Cy Pres Awards

Altshuler Berzon, LLP
Dworken & Bernstein Co., LPA
Heisler, Feldman,
McCormick & Garrow, PC
McGuinn Hillsman & Palefsky
Nichols Kaster, PLLP
The Law Office of Rob Wiley, PC

Donors

\$10,000 and above

Brendan Donelon, Donelon, PC

\$2,500-\$9,999

Albert & Doris Pitt Foundation

\$1,000-\$2,499

Colorado Plaintiff
Employment Lawyers Association
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Patricia M. Ito
Lewis, Feinberg,
Lee, Renaker & Jackson, PC
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Marilyn Townsend

\$500-\$999

Cynthia Y. Chaw
Debra P. Chaw
Bruce A. Fredrickson &
Kristin L. Fredrickson
Kansas City NELA

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Elinor C. Chaw &
William H. Chaw
Law Offices of Fern Trevino

\$100-\$249

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Goldman & Ehrlich
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Lee Holen Law Office
Elizabeth A. Rodgers
Katherine Hart Smith

Under \$100

Lawrence R. Chaban
Charlotte Croson
Michael D.J. Eisenberg
Bruce J. Highman
Vida M. Holguin
Messing, Rudavsky & Weliky, PC
In Honor of Fredric Gross
Nareeya Nalivka
Marcie Storch
Alfredo Vergara-Lobo

Restricted Contributions

The Employee Rights Advocacy Scholarship Fund

\$10,000 and above

Kazan, McClain, Abrams,
Fernandez, Lyons,
Greenwood, Harley &
Oberman Foundation, Inc.

\$5,000-\$9,999

Denise Abrams &
David Harrington Fund

\$250-\$499

Cynthia Y. Chaw

\$100-\$249

Terisa E. Chaw
In Honor of Elinor C. Chaw

Under \$100

Anonymous

Grants

The Public Welfare Foundation

The Paul H. Tobias

Attorney Fellowship Program

\$5,000 and above

Freking & Betz
Outten & Golden LLP

\$2,500-\$4,999

Terisa E. Chaw &
James A. Hendriksen
Messing, Rudavsky & Weliky, PC

\$1,000-\$2,499

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Bruce A. Fredrickson &
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Cynthia Y. Chaw
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Schall & Barasch LLC
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Under \$100

Albert L. Brown, Jr.
Emily S. Losacker
Michael G. Okun
David Reichert
Richard Weiland



We welcome your involvement in advancing equality and justice in the American workplace. There are many ways to participate in The Institute's work:

- Make a tax-deductible contribution to The Institute to support one or more of our programs, or make an unrestricted gift:
 - The National Litigation Strategy Project
 - The Paul H. Tobias Attorney Fellowship
 - The Employee Rights Advocacy Scholarship Program
 - The Employee Rights Advocacy Law Student Fellowship Program
- Designate The Institute as a *cy pres* recipient.
- Name The Institute as a beneficiary in your will or living trust.
- Volunteer your special skills and talents.

The Institute is a tax-exempt charitable and educational organization under Section 501(c)(3) of the Internal Revenue Code.
It is incorporated in California as a nonprofit public benefit organization.

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2009 ANNUAL FINANCIAL STATEMENT

Revenue

Employee Rights Advocacy Scholarship Fund	\$ 7,970
Paul H. Tobias Attorney Fellowship Program	\$ 17,440
Public Welfare Foundation	\$200,000
Employee Rights Advocacy Law Student Fellowship Program	\$ 650
Cy Pres Awards	\$ 813
Unrestricted Contributions	\$ 17,494
Total	\$244,366

Program & General Expenditures

Fundraising	\$ 5,891
Public Welfare Foundation Project	\$190,804
Employee Rights Advocacy Scholarship Program	\$ 18,542
General & Management	\$ 43,723
National Litigation Strategy Project	\$ 5,705
Other Programmatic Activities	\$ 250
Total	\$264,915

Net Revenue
Over Expenditures (\$20,549)

Reserves
(12/31/2009) \$230,602

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