



# Strengthening the Cooperative Economy: Practical Tips for Current and Prospective Co-ops

*Webinar Series*



**COOPERATIVES**

BUILD A BETTER MAINE

Co-op Month  
October  
2023

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# Series Schedule

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**Session 1** | Human Resources Best Practices for your Growing Co-op business

*October 11 - 11:00 AM - 12:00 PM*

**Session 2** | Strategies for New Co-ops: Financing, Business Planning, and Growth

*October 18- 11:00 AM - 12:00 PM*

**Session 3** | Strategies for Planning and Financing Cooperative Expansions

*October 25 - 11:00 AM - 12:00 PM*

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# Session 1 | Human Resources Best Practices

October 11, 2023

## Panelists:

**TARA WALKER**  
(she/her/hers)

Attorney, Bernstein Shur, Labor & Employment Practice Group

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**John Crane**  
(he/him/his)

General Manager, Portland Food Co-Op

# Agenda

<b>PART 1</b>	Introduction
<b>PART 2</b>	The Employment Laws You Need to Know
<b>PART 3</b>	Hypothetical Questions Group 1: Addressing Employees with Disabilities and ADA Accommodations
<b>PART 4</b>	Hypothetical Questions Group 2: Harassment and Discrimination
<b>PART 5</b>	Q + A





# Employment Laws You Need to Know

Employment law issues can be myriad and complex, see the list below. Let's break them down into categories so that you better understand what obligations you have.

- Fair Labor Standards Act and State or Local Wage and Hour Laws
- Title VII, State and Local Nondiscrimination Laws
- Americans with Disabilities Act (ADA)
- Equal Pay Act (EPA)
- Occupational Health & Safety Act (OSHA)
- National Labor Relations Act (NLRA)
- Immigration Reform & Control Act (IRCA)
- Fair Credit Reporting Act (FCRA)
- Family & Medical Leave Act (FMLA)
- Genetic Information Nondiscrimination Act (GINA)
- Age Discrimination in Employment Act (ADEA)
- Affordable Care Act (ACA)
- Worker Adjustment & Retraining Notification Act (WARN)
- State FMLA or paid FMLA laws
- State Human Rights/nondiscrimination laws







# Wage and Hour Laws

Wage and hour laws require all employers to pay employees pursuant to specific rules.

- **Minimum wage**
  - Federal (\$7.25)
  - State (e.g., New York \$14.20)
  - Local (e.g., New York City \$15.00)
- **Overtime at 1.5 regular rate for all hours worked over 40 in a week**
  - State laws (e.g., California is 1.5 times for more than 8 hours in a day, or more than 6 consecutive days in a week and 2 times for more than 12 hours in a day, or 8 hours in the 7th consecutive day).
  - Exemptions: Administrative, Professional, Executive are most common
- **State and local laws:** Although they vary, they often include:
  - **Prompt payment:** Payment within a certain number of days from the hours worked, or from termination.
  - **Hours worked definition:** to include travel time, training time, in some cases, on-call time, etc.





# Equal Employment Opportunity

Know which protected classes apply in your jurisdiction.

- Age (40 and older)
- Ancestry
- Race
- National Origin
- Color
- Creed
- Marital Status
- Familial Status
- Disability or medical condition
- Religion
- Sex
- Sexuality
- Gender identity and expression
- Veteran and military status
- Genetic information



Consider Employment Practices Liability Insurance (“EPLI”)



# Harassment, Discrimination, and Retaliation

- Have four essential policies:
  1. **An Equal Opportunity Policy:** Providing for equal opportunity in employment in all aspects of employment (hiring, training, performance evaluation, job duties, and termination);
  2. **Prohibiting Harassment:** Based on an employee's membership in a protected class, and a separate policy prohibiting sexual harassment;
  3. **Prohibiting Retaliation:** Based on an employee's reporting of concerns under these policies or laws, if your state has a whistleblower protection law or similar protections, including those definitions of protected conduct;
  4. **Complaint Procedures:** Specifies whom employees should go to if they have complaints, include one backup person, outline your process, specify possible outcomes.







# Accommodation for Individuals with Disabilities

- Understand whether this applies to you (federal if you have 15 or more employees, or under state laws)
- Have a policy outlining the process to provide overview of the process and relevant contact person;
- Understand your obligations to engage in the interactive process;
- Note that there are limitations on the type of information that you can request both in general (pre-employment screenings) and specifically following a request for accommodation; and
- Always consult with legal counsel if you must deny a request for accommodation.





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# Hypotheticals – Employees with Disabilities

We have a staff person who has called out more than our attendance policy allows. During my conversation with them, they stated that they have been having mental health issues.

Since they mentioned mental health, what legal obligations should I be aware of?

What if the employee instead says that they need a “mental health day” instead?



# Hypotheticals – Employees with Disabilities

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# Hypotheticals – Employees with Disabilities

I have a staff person who came to work visibly intoxicated. She knocked over several shelves and we had to have someone drive her home. She has entered a residential treatment program, but we recently learned from her sister that she left the program early and is not cooperating with treatment plans.

- Can I require her to complete the full program before returning to work?
- I have more than 50 employees, am I required to provide her Family & Medical Leave for this?
- Do I have any obligations under the Americans with Disabilities Act? Is alcoholism or substance use disorder a “disability”?



# Hypotheticals – Employees with Disabilities

A staff person told me that they cannot perform all aspects of their job because of chronic pain.

- What are my legal obligations?
- What should I do first?
- What can I ask for?
- How do I know if an accommodation is “reasonable” (million-dollar question!)



# Hypotheticals – Harassment and Discrimination

A staff person has come to me after hours and told me that another staff person is sexually harassing them. This staff person, Tina, has shared that the other staff person, Stephanie, keeps coming up behind her and standing uncomfortably close and watching her do her work. She says that after work they were out for drinks with two other colleagues and Stephanie put her hand on Tina's leg and started moving her hand up Tina's thigh. Now Stephanie has texted Tina, which Tina shows me, saying she had a "great time the other night," and "maybe we'll get stuck working late together!"

- What do I need to know?
- What should my first step be?
- Should I speak to the other staff members?



# Hypotheticals – Harassment and Discrimination

A staff person who is Black has called to tell me that they believe they are being discriminated against by one of their white colleagues. This employee, Romy, has stated that Michelle, another staff person who works with her (but is not her supervisor) has been comparing her to the previous person that served in Romy's role, focuses a lot on what Michelle can "teach" Romy, has complimented her on being "articulate." Romy tells me these are clearly instances of racial aggression and antagonism and that she is being subjected to a hostile work environment.

- What is a hostile work environment?
- How should I respond to Romy?
- What do I do?





# Questions?





# Thank you!

## Contact us:

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