

# Maine Rural Water Association 2019 Destination Education

## Labor & Employment Governance: Best Practices

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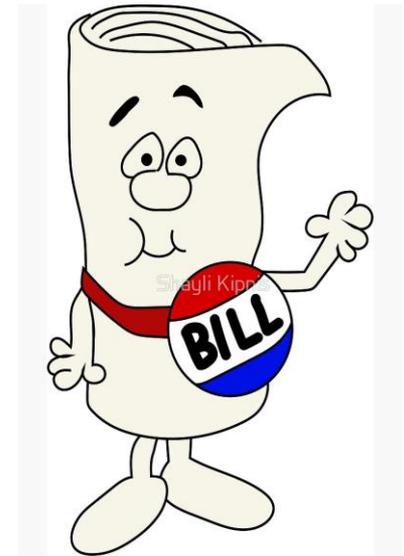
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# **Best Practices in Utility Governance**

**Following the law and  
making prudent decisions**

- What is “The Law”?
  - Federal statutes and rules
    - Safe Drinking Water Act
  - State statutes and rules
    - Private and Special Laws – water system charter
    - Title 22 – safe drinking water; bulk water (and DWP rules)
    - Title 35-A – PUC (and PUC rules)
    - Title 21-A and Title 30-A -- elections
    - MDOT rules – right of way access
    - MMBB and/or Rural Development – financing
  - Municipal charters and ordinances
  - Water system bylaws and terms and conditions
  - PUC orders governing particular systems





- Case Study: Trustee Elections
  - Charter spells out how many trustees; who votes; timing of votes
  - May be further refined by district's bylaws
  - State law also governs elections, including how to prepare and manage ballots
  - What's at stake? Customer confidence; municipal officials; PUC oversight

## Water Departments



- Case Study: Navigating Town Hall
  - A Legislative Charter might spell out service territory and water rights
  - Municipal Charter and Ordinances
  - Governing body is the Council or Select Board
  - What's at stake? Public fire protection rates. Balancing property taxes with water rates. Appointing a separate water committee.

## Open Meeting Laws

Business must be discussed publicly

What is a meeting?



- ❖ Advance Notice
- ❖ Red Sox and the Weather
- ❖ Email

## Executive Sessions

### The Three “L’s”

- Legal
- Land
- Labor



- ❖ Must state reason for session and vote publicly
- ❖ Cannot vote in private
- ❖ Attorney Client Privilege

## Some Common Challenges

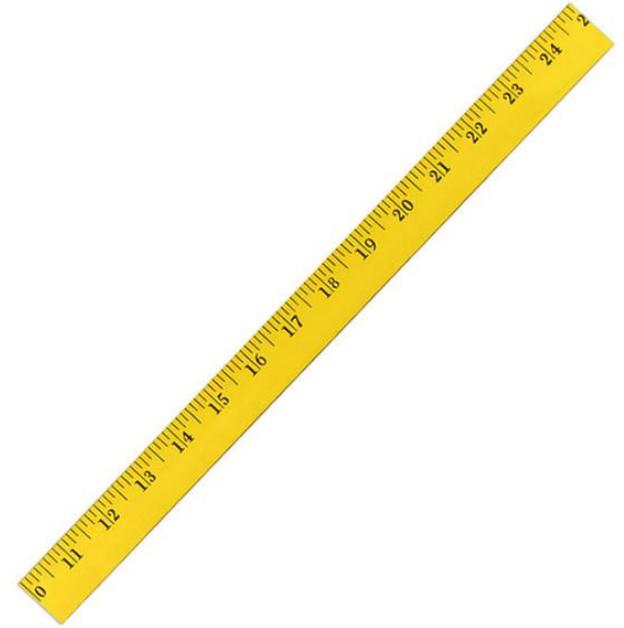
- Trustee Compensation
- Serving Private Subdivisions
- Bulk Water Sales
- Rate Increases





## GOLDEN RULE

- Have a policy.
- Follow the policy.
- You will be judged on whether your process was fair, and how well you followed it.



# **Navigating Conflicts of Interest**

## **Avoiding Pitfalls**

## Conflicts of Interest: public officials

Direct, personal financial interest

Duty to disclose; recuse; record

Violation may void trustee action

### **Appearance of impropriety**

You know it when you see it



## Conflicts of Interest: Some Hypothetical Examples

Trustee owns firm that is a potential vendor

Trustee's sister owns company that is a major water user

Employee's friend submits bid to serve as vendor



## Wage and Hour Issues

Understanding your obligations will save you  
future headaches

## Federal Law

- Fair Labor Standards Act
  - Minimum Wage
  - Overtime
- Most Common Issues
  - Exempt/Non-Exempt
    - Administrative Exempt
    - Professional Exempt
    - Executive Exempt
  - Pay for Travel Time
    - Work to Home
    - Overnight away from home
    - Away from normal work location
    - Travel during work
  - Misclassification



## State & Local Law

- Minimum Wage & Overtime (\$11/hr & 1 ½ Regular Rate of Pay)
  - Increase to \$12/hr 1/1/2020
  - Employer may not require an employee to work over 80 hours of overtime in consecutive 2-week period unless employee performs essential services to the public/Governor declared emergency/protect public health or safety
- Independent Contractors
- Wage Payment Requirements
  - Intervals no greater than 16 days
- Rest Breaks
  - 6 consecutive hours = ½ unpaid break



## Leave Laws

Local, State and Federal requirements to be mindful of when employees request time away from work



## Federal Leave Laws

- Family & Medical Leave Act
  - 50 or more employees
  - Requires employers to provide covered employees with up to 12 weeks unpaid protected leave during a 12-month period for a qualifying reason
  - Covered Employees: 12 months + 1,250 hours worked
  - Qualifying Reason
- American's with Disabilities Act (ADA)
  - 15 or more employees
  - Prohibits employment discrimination against qualified individuals with a disability and individuals regarded as disabled
  - Time away from work may be a reasonable accommodation

## Federal Leave Laws (continued)

- Pregnancy Discrimination Act
  - 15 or more employees
  - Protections provided within Title VII (discrimination because of sex)
- Uniformed Services Employment and Reemployment Rights Act (USERRA)
  - All Employers
  - Governs employees' rights when returning to work after serving in the uniformed services for, in most cases, less than five years

## State Leave Laws

- Maine Family and Medical Leave Statute
  - 15 or more employees
  - Eligibility- Worked 12 consecutive months
  - 10 weeks in a 2 year period
  - Unpaid
- Military Leave Law
  - All employers
  - Eligibility: military members and received military orders
  - No time-period
  - Unpaid
- Family Military Leave Law
  - 15 or more employees
  - Eligibility – Spouse, partner, child deployed for over 180 days and a Maine resident; worked for employer 12+ months and 1,250 hours
  - 15 days per deployment
  - Unpaid



## State Leave Laws (continued)

- Victims of Violence
  - All employers
  - Eligible if employee or child, parent, spouse is victim of violence, assault, stalking
  - “Reasonable and Necessary”
  - Unpaid
- Maine’s New Paid Leave Statute
  - LD 369
  - “An employer that employs more than 10 employees in the usual and regular course of business for more than 120 days in any calendar year shall permit each employee to earn paid leave based on the employee’s base pay . . . .”