

EMPLOYEE OWNERSHIP COMPARISON

| Issue | Worker Cooperative | Worker Cooperative 308b | ESOP | Custom Worker Ownership Plan |
|---|--|--|---|--|
| Ownership Structure | One share per person common stock. Can also have preferred stock (return on preferred stock is limited). | Can have both members shares and investor shares | Very flexible. Ranges from equal distribution to a complex formula based on salary, years of service, and hours worked. Allocated according to predetermined formula. Can be full or partial ownership. | Not regulated. Can be based on any formula chosen. |
| Legal structure. | Simple, but not familiar to all attorneys. The ICA Groups has a set of model by-laws available. Can be organized as a C-Corp or an LLC if articles and by-laws are structured appropriately. | Recognized in Minnesota. Similar form exists in a handful of states. A new form, so will not be familiar to many attorneys. | Relatively complex, but familiar to many attorneys. Can incorporate as a C-Corp or S-Corp. | Regular C-Corp, S-Corp, or LLC. |
| Regulation | Little, except for tax issue | Little, except for tax issue | Highly regulated | No additional regulation |
| Voting Rights | One person, one vote | One person, one vote if it is going to be a true worker co-op. Patrons must retains at least 50% voting control on board of directors. | One share, one vote, <i>or</i> one person, one vote. One share, one vote on supermajority issues. | One share, one vote, <i>or</i> one person, one vote. One share, one vote on supermajority issues. |
| Adding new members | Co-op sets probationary period. | Co-op sets probationary period. | Everyone over 21 who works more than 50% time, with one year of service becomes a member. | Not regulated. Requires careful planning to ensure that model is dynamic and provides clear blueprint for how new members will be added. |
| Allocation of profits | Based on hours worked or wages earned. May take into account other factors such as seniority. | Profit allocation for patrons based on patronage. Profit allocation for investors based on shares held. Investor members can receive no more than 85% of profit, regardless of ownership stake. | Based on shares held. ERISA requirements ensure that allocation policy will be clear. | Based on shares held. Important that there is a clear blueprint for how how future stock allocations will be handled. |
| Tax implications to company paying dividends | Cooperative pays members a patronage refund, which is a return on patronage, not capital. The payments are a deductible business expense at the corporate level. | Can elect to be taxed as partnership under subchapter K and avoid taxation at the association level. Alternatively, if meeting test of operating on a cooperative basis, could elect subchapter T. | Tax deductible. | Not tax deductible for C-corp. LLC taxed as partnership has only shareholder-level taxation. |
| Tax implication to individual of paying dividends | Can be paid out in cash, or into "internal capital account" of individual. Complex accounting options. Patronage refunds are taxed as ordinary income. | For members, patronage dividend would be taxed as ordinary income. | Taxed as dividend income with a maximum rate of 15%. | In a C-Corp, taxed as dividend income with a maximum rate of 15%. For LLC taxed as ordinary income. |

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| Need to withhold Social Security on dividends declared for worker owners. | In dispute | In dispute | No | No |
| Worker owner sale of stock | Not permitted. When members leave, they must sell them back to the company or an incoming member. | Not permitted. When members leave, they must sell them back to the company or an incoming member. Investor stock controlled by articles | Usually not permitted. When a member leaves the company, must offer them an opportunity to sell their stock back to the company. | May or may not be permitted, determined by by-laws and articles. |
| Valuation of individuals' "ownership stake." | Book value | Book value | Fair market value based on independent appraisal performed annually. | Valuation method can be book value, independent appraisal, or pre-agreed formula. |
| Valuation of company if sold to a 3 rd party. | Fair market value | Fair market value | Fair market value | Fair market value |
| Cost to set up | \$5,000 to \$20,000 | \$5,000 to \$20,000 | \$20,000-\$35,000 (more if complex) | \$5,000 to \$20,000 |
| Annual maintenance cost | None, unless chosen design requires valuation. | None, unless chosen design requires valuation. | \$7,500 to \$15,000 | None, unless chosen design requires valuation. |
| Potential tax benefit to seller | The law states that the seller can defer capital gains tax on the proceeds of the sale if they are invested in 'approved securities.' To date, this has not been tested in the courts or by the IRS. | If meets cooperative test, would be the same benefit as a worker cooperative. | Can defer capital gains tax on the capital gains tax on the proceeds of the sale if they are invested in 'approved securities.' At least 30% of sales proceeds to employees | None |
| Outside equity investors | Can only invest in preferred stock. May be difficult to attract investors because of limited return and control. | Permitted, but cannot receive more than 85% of the profit regardless of ownership stake. | Permitted. The stock held by the ESOP trust must (in general) be voting common stock with the greatest dividend and voting rights of any class of common stock, or preferred stock that is convertible into such voting common stock. | Permitted with no restrictions. |
| Potential for seller to retain partial ownership after sale to workers | Seller can participate as a preferred shareholder and/or hold a single share of common/membership stock (like other members) if working in the cooperative. | Yes | Yes, but seller's holding must be outside the ESOP | Yes |
| Bank Financing | Cooperatives not well known to banks, an indication of risk. | Structure will likely be unfamiliar to banks. | Well understood by banks. In a C-Corp ESOP, loan interest and principle can be tax deductible, improving cash flow. | Well understood by banks. |