The reintroduction of bills like this one in successive Congressional sessions is part of The ESOP Association’s legislative strategy. By working to reintroduce bills like S. 177, we ensure that ESOPs and ESOP supporters remain top of mind on Capitol Hill.

Further, the reintroduction of similar or identical bills also helps to generate and increase momentum that builds until these bills have sufficient support to be passed and signed into law.

### What the Bill Will Do

Titled the Promotion and Expansion of Private Employee Ownership Act, the bill includes provisions that seek to:
  - Expand financing opportunities for S Corporation ESOPs.
  - Provide technical assistance for companies that may be interested in forming an S Corporation ESOP.
  - Ensure that small businesses that become ESOPs retain their Small Business Administration (SBA) certification.

All these items are valuable and will help protect and advance ESOPs.

The last item on the list has been a particular thorn in the side of the ESOP community for years. Under current regulations, a business that qualifies for the SBA’s 8(a) certification will lose that certification if it sells a majority of its stock to an ESOP.

The 8(a) certification can help a business gain government contracts, as well as qualify for state and local contracts that follow the SBA’s lead. This certification can be very important to a firm’s revenue stream and survival. The loss of that certification can serve as a tremendous disincentive for businesses considering an ESOP.

### Congressional Support Continues

The following group of Senators co-sponsored S. 177 as soon as it was introduced. All 24 of these Senators have an established history of supporting ESOPs.

1. Sen. Thom Tillis (R-NC)
2. Sen. Rob Portman (R-OH)
3. Sen. Michael Crapo (R-ID)
4. Sen. Maria Cantwell (D-WA)
5. Sen. James E. Risch (R-ID)
7. Sen. Patrick Leahy (D-VT)
8. Sen. Amy Klobuchar (D-MN)
9. Sen. Debbie Stabenow (D-MI)
10. Sen. Tammy Baldwin (D-WI)
11. Sen. Robert P. Casey, Jr. (D-PA)
13. Sen. Chris Van Hollen (D-MD)
15. Sen. Joni Ernst (R-IA)
17. Sen. Jack Reed (D-RI)
Does your member of the House or Senate have a track record of supporting ESOPs? There is an incredibly easy way to find out: Visit our ESOP Advocates page, which offers a state-by-state listing of our supporters on Capitol Hill.

If your member of the Senate has a record of supporting ESOPs, reach out and thank that person for their ongoing support.

If not, consider reaching out and asking your Senator to sponsor S. 177.

If you are looking for guidance and tips on how to interact with your elected officials, be sure to check out our Advocacy Kit.

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### Legal Update

**Failure to Obtain Current Valuation Is Key in Cook Suit**

By Robert F. Schatz, ESOP Plus: Schatz Brown Glassman, West Hartford, CT
Edited by Julie Govreau, Senior Vice President and Chief Legal Counsel, Greatbanc Trust Company, Lisle, IL

In *Cook Technologies, Inc. v. Panzarella*, 2018 U.S. Dist. LEXIS 212566 (D.C Ed Pa, 2018), Cook Technologies, Inc., in its capacity as the plan administrator of the Cook Technologies, Inc. ESOP sued Thomas Panzarella, its former president, an ESOP Trustee, and both an ESOP participant and a non-ESOP shareholder, for violating ERISA’s “prohibited transactions” provisions. The suit centered on the sale of Panzarella’s non-ESOP owned shares to the ESOP.

Claiming Panzarella breached his fiduciary duties and alleging that he violated the Racketeering Influence and Corrupt Organizations Act (RICO), Cook sought remedies that included:

- Rescission of the sale.
- The appointment of an independent fiduciary.
- An offset against Panzarella’s plan benefits.

Panzarella counterclaimed for:

- Failure of the ESOP to pay him his retirement benefits following the termination of his employment.
- Unpaid benefits under his salary continuation contract.
- Loan payments under a loan that he had made to Cook.
- Violations of the Pennsylvania Wage Payment and Collection Law (43. P.S. 260.1, et seq.).

#### Background

Cook is an engineering, consulting, and design services firm. In the early 2000s, as a Cook employee, Panzarella helped design a winch-mounted lift for mobility impaired/physically challenged consumers. The device was named the Freedom Lift.

A few years later, Panzarella designed an Automated Transport and Retrieval System (ATRS) for a wheelchair. To get financing through Federal and state grants, Panzarella and Cook formed and capitalized a new company, Freedom Sciences, LLC. Panzarella became the CEO of Freedom, while concurrently remaining the president of Cook.
Freedom granted to Cook an exclusive manufacturing agreement. Freedom prospered and was sold in 2010 in a transaction from which both Cook and Panzarella profited. After the sale, Cook struggled financially as Freedom’s purchaser did not utilize Cook for all its manufacturing requirements. The value of the Cook common stock as of December 31, 2010 was $104.08 per share, as determined by an independent appraiser. By December 31, 2013, the stock had no discernible value.

In between—in November 2011—Panzarella sought to sell his shares (at $89.89 per share) to two of the company’s long-time employees, both of whom were directors of Cook and ESOP trustees. The company’s outside accountants advised that—based on the 2010 valuation of $104.08—each of the prospective buyers would have to recognize deemed compensation if they bought at the “discounted” price. The sale was aborted.

**Stock Purchase Issues**

Since the purchase of Panzarella’s shares did not materialize, and Cook needed an infusion of capital, the two directors—who were also ESOP trustees—purchased shares directly from the company for $104.08 per share. (As part of the purchase, the two directors/ESOP trustees received “bonuses” to cover their deemed income tax liability, so that they effectively paid $89.89 per share for their shares).

The court found that the purchase price likely was in excess of the fair market value of Cook’s shares.

In 2012, after the purchase of Cook’s shares by the two directors/ESOP trustees, Panzarella consulted Cook’s ESOP counsel about his options—particularly with respect to the difference between having the company redeem his shares versus having the ESOP purchase his shares. Panzarella misunderstood the advice he received. He believed (erroneously) that Cook and the ESOP were not required to determine anew the valuation of the ESOP shares as of the date of his sale of shares to the ESOP.

Despite knowing of Cook’s financial difficulties at the time, he and the other ESOP trustees failed to obtain an updated valuation (or determine what the value of the ESOP’s shares might be). And, apparently without obtaining further assistance from either Cook’s corporate or ESOP counsel, the ESOP trustees permitted the ESOP to purchase 3,000 of Panzarella’s shares for $104.08 per share (or a total consideration of $312,240).

Because Cook had been experiencing financial difficulties, and to provide Cook with needed working capital, Panzarella loaned $208,160 of the sale proceeds to Cook.

**Litigation Trigger**

Panzarella’s 2012 sale to the ESOP at a price based on a 15 month-old valuation triggered the litigation. The litigation was brought by Panzarella’s fellow ESOP trustees when they realized they might have personal liability for their breach of their ERISA fiduciary duties in authorizing the transaction in the absence of an updated valuation as of the date of the transaction or, at a minimum, without attempting to ascertain that the prior valuation of the shares constituted a reasonable approximation of the fair market value of the shares being purchased.

A sale of stock by an officer, director, and ESOP trustee is a transaction between the ESOP and a “related party,” and is a prohibited transaction under ERISA. However, if the sale is for no more than “adequate consideration,” the transaction would be exempt from the prohibited transaction rules. This means the sale must be consummated at a price equal to or less than the fair market value of the stock, determined in good faith by the ESOP trustees as of the date of the transaction.

**The Ruling**

The court found that the ESOP trustees did not conduct any investigation into the value of Panzarella’s shares as of the date of the ESOP’s purchase and permitted the ESOP to pay more than “adequate consideration” for Panzarella’s shares. Thus, Panzarella and the other ESOP trustees—by engaging in a non-exempt prohibited transaction—breached their fiduciary duties as ESOP Trustees and “related parties” under ERISA.

The court’s remedy was to reverse the prohibited transaction. It rescinded the 2012 sale and determined Panzarella had to return the sale proceeds to the ESOP (and that the ESOP had to return to Panzarella the shares he sold to the ESOP).

The court then addressed Cook’s attempt to offset Panzarella’s ESOP benefits. It also addressed the amounts due Panzarella for the loan he had made to Cook (with a portion of the ESOP sale proceeds) and severance benefits owed to Panzarella, against Panzarella’s liability for his breaches of fiduciary duty.

The court held that, under Pennsylvania contract laws and the Wage Payment and Collection Law, Cook had no basis for withholding the loan payments and severance benefits contractually owed to Panzarella; it ordered Cook to pay the amounts due to Panzarella.

The court also dismissed Cook’s claims of a RICO violation, which principally were alleged to have occurred in connection with Panzarella’s activities in selling Freedom and allegedly personally profiting from the sale.

The court also declined to allow Cook to offset Panzarella’s ESOP benefits against his ERISA fiduciary liability. While under ERISA Section 206(d)(4) to this general proscription on assignment/alienation, there are exceptions under ERISA Section 206(d) (4) to this general proscription on assignment/alienation. These exceptions include (among other circumstances not relevant in this case):

- When such offset is ordered under a judgment of conviction for a crime involving the plan.
Ownership Advantage

Six Ideas for Your ESOP’s Social Media Policy

By Maureen Clayton, President, Nest Egg Communications

There was a very lively discussion at our session on Social Media Strategies for Employee Engagement at the ESOP Association Las Vegas Conference. The central issue wasn’t about channels, or hashtags, or content. It was about developing a company social media policy. Some participants viewed it as limiting free speech, others suggested it was illegal. The discussion was lively!

It is true that the National Labor Relations Board (NLRB) has deemed some company social media policies are “overly broad” (https://www.nlrb.gov/rights-we-protect/rights/nlrb-and-social-media), but it is incorrect so say the NLRB determined that social policies are illegal. Not only are they legal, they are a business basic for companies large and small.

Without a clearly defined social media policy, an ESOP, just like any other business, is open to risks and potential damage to brand reputation. Developing a social media policy with clear guidelines ensures that employees share responsibly.

And you want your employee owners to share! According to a survey by Mediakix, not only are more people on social media, the average user spends more than 50 minutes a day on social media. Your employee owners probably are already social channel users. You want them to share stories about your great workplace.

Consider this: With unemployment at historic lows, attracting and recruiting new talent is challenging. Job seekers will search social media to see what your employee owners say about the business, how you recognize and celebrate teams, and what the culture is like. Several ESOPs have embraced social media to share why they’re a great workplace. For examples, check out @EntPartners (Entertainment Partners), @ButlerTill, and @SalasOBrien.

Employees can be the best ambassadors for your brand. A social media policy provides the dos and don’ts so they know what they can and can’t share. It makes it clear how to properly discuss the company and its products so that employee owners can be confident about what they share online.

Here are six “must have” topics to consider in your social media policy:

**Connect to your values.** Your core values guide company decision making, unite your employee owners, and define your brand. We often encourage team members to “live the values.” Make that connection in the social media policy.

**Safeguard personal information.** It’s not okay to share personal information about co-workers or customers without permission from those individuals.

**Keep key data private.** State clearly which types of information can’t be disclosed—such as trade secrets, insider tips, customer lists, and financial forecasts. Be sure your list also includes any information that is operational, proprietary, or confidential. Include language from the business code of conduct or ethics policy.

**Avoid acting as company spokespersons.** Social media is a rewarding experience for many who choose to share opinions and experiences. It is important that social media users do not represent themselves as spokespersons for the business.

**Don’t defend the brand to naysayers.** Set up a process within the business to address negative social media feedback that is received either from customers or competitors. Be sure it’s clear in your social media policy that employees must not take up this role—it only makes things worse.

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**Don’t defend the brand to naysayers.** Set up a process within the business to address negative social media feedback that is received either from customers or competitors. Be sure it’s clear in your social media policy that employees must not take up this role—it only makes things worse.
Be respectful. Language that could be viewed as obscene, discriminatory, threatening, abusive, or as intended to cyberbully, harass, or create a hostile work environment should be prohibited. Online conduct that adversely affects the performance of fellow employees or defames customers, suppliers, competitors or those who work on behalf of the business should be subject to the guidelines in the company code of conduct.

One last thing: Before you finalize the social media policy, have a conversation with your company legal representatives to ensure the policy is aligned with your employment policies, and state and federal laws. Then include the social media policy in your onboarding materials or in the employee handbook. It’s a good idea to schedule a training session annually to review the social media policy with team members.

ESOPs Gain New Attention as a Wealth Distribution Mechanism

Aspen Institute, Rockefeller Foundation Seek ESOP Investment

Two organizations with significant pull in the business world are focusing their attention on the benefits that ESOPs and employee ownership can bring to disadvantaged communities.

The Aspen Institute Economic Opportunities Program and the Rockefeller Foundation have been working jointly to explore and promote the use of ESOPs and employee ownership in Qualified Opportunity Zones. These 761 zones include distressed communities in all 50 states, the District of Columbia, and five U.S. territories.

These zones were created by the Tax Cuts and Jobs Act of 2017 to encourage investment in the communities that need them most. But, as the Aspen Institute and Rockefeller Foundation note in a recently released document, not all investments benefit a community equally. The groups agree that investments that result in local employees owning a share in the business are important and worthy of support.

“For the Opportunity Zone incentives to fulfill their potential for impact, it is essential that strategies that both encourage the development of high-quality jobs and offer working people a stake in the success of their local economy are supported,” the document states. “Employee share ownership is one such strategy.”

The groups have held joint meetings and facilitated discussions among experts, in an effort to find ways to encourage Opportunity Zone investments in employee owned businesses. After one such meeting, in New York, the group determined that regulatory or legislative changes might be needed to provide greater clarity for those considering investing in an ESOP in an Opportunity Zone.

The groups continue to explore creative options that might promote greater ESOP investments in these zones. Some of the ideas and questions raised so far include:

- Can Opportunity Funds be used to finance the acquisition and improvement of land owned by retiring business owners who sell to their employees?
- Can ESOPs be an inclusive and responsible way for investors to exit from their investments in Qualified Opportunity Zones at the end of the 10-year investment period?
- Can the Opportunity Zone regulations be clarified to include the structured equity used by ESOP owned S corporations under the definition of “qualified opportunity zone stock”?

The work these groups have invested in this effort underscores the value ESOPs can offer as a means of equitable wealth distribution, including—and perhaps especially—for those most in need. We salute the work of these groups. We will provide additional updates as they become available, and encourage our members to read the full report and to stay up to date with the efforts of the Aspen Institute and the Rockefeller Foundation.

Calendar of Deadlines and Important Dates

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<tr>
<td>Feb. 1</td>
<td>Deadline for Entering AACE and Employee Ownership Month Poster Competitions</td>
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<td>ESOP Professionals’ Forum</td>
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To see all national and chapter meetings, visit us online at: www.esopassociation.org
How Long Do I Have to Keep My Plan Records?

By Deb Karlsrud, ESOP Consulting Director, Newport Group.
Reviewed by Lynn Archer, Senior Vice President and Business Development Officer, GreatBanc Trust Company

The answer to the question posed in the title of this article is one that you have likely heard before in the course of your business career: It depends.

To help you get to a deeper answer, it might be helpful to break down your records into three categories:

- Legal plan documents.
- Employee data.
- Annual plan data.

The lists below are not intended to be all inclusive, but to give you an idea of what items are included in each category.

**Legal Plan Documents**

Legal plan documents should be kept for at least six years after the filing deadline of the final Form 5500 that is filed for the plan following plan termination.

These documents include items such as:

- All plan documents that have been adopted during the life of the plan.
- All plan amendments and determination letters.
- All Summary Plan Descriptions and Summaries of Material Modifications that have been provided to participants over the life of the plan.
- All executed stock purchase agreements, including— if applicable—loan documents and the corporate approval of any 1042 elections.
- All stock redemption agreements.
- All VCP or Audit CAP resolutions.
- Minutes, including Corporate Board minutes that relate to the plan; Plan Administrator committee minutes; if you have internal trustees, any trustee meeting minutes; and if you have a directed trustee, any instructions provided to such trustee.

**Participant Records**

Participant records should be kept for at least six years after the filing deadline of the plan's final Form 5500.

When a plan is terminated, some practitioners advise maintaining these participant records indefinitely. It’s not unusual for former participants, beneficiaries, and alternate payees to claim they are due benefits many years after a participant has terminated employment with a company and the related benefits have been distributed.

Participant records include items such as:

- Census data that supports the determination of eligibility, vesting, and allocations. Examples include compensation, compensation that is excluded per plan definition, and hours worked for each participant.
- Participant allocation reports, which should include balances, contributions, forfeiture allocation, stock conversion/purchase/redemption allocations, and allocation of earnings and expenses.
- Participant withdrawal records, which should include distribution elections, participant loan applications, and Forms 1099R.
- Beneficiary designation forms. (If elections are made online, you still may need a paper form if a married participant designates a primary beneficiary that is someone other than the spouse.)

Companies with 401(k) plans should annually download the following from the 401(k) recordkeeper, if it is not being tracked within their internal records: investment elections, deferral withholding rates, and distribution summaries for when requests are made electronically.

**Annual Plan Reports**

Annual plan reports should be kept for at least six years after the filing deadline for the respective year’s Form 5500 filing. These records include items such as:

- Form 5500, Form 8955-SSA, and all relevant schedules, the plan audit (if applicable), and any supporting data used to complete the forms.
- Compliance testing data, including items like the following: 410(b) coverage test, 415 limit test, 416 top heavy test, 409(p) test; compliance with 1042 election restrictions; any non-discrimination testing of the deferrals, match, non-safe harbor contribution allocation formulas, and non-safe harbor definition of compensation.
- Required annual notices such as: Summary Annual Report; safe harbor notices, auto enroll notices, QDIA notices and investment disclosure notices.
- Records that are used to determine the plan’s year-end balance sheet and income statement such as: ESOP bank statements, brokerage statements and/or trust reports.
- Evidence of fidelity bond.
- Corporate tax returns as evidence of your tax deduction for your match and regular contributions.
Annual stock valuations.
The above records can be kept in hard copy or electronically. If you are maintaining any of these records electronically, they must be in a format that can be turned into hard copies. For plan documents and stock purchase agreements, you should keep a hard copy original.
The above are federal requirements. You should check with your legal counsel to see if your state has any laws that would require you to hold any of this information for a longer period.

Plan sponsors should not assume that the responsibility for record retention can be transferred to a third party administrator (TPA) or to a trustee. TPAs and other vendors may have limited record retention policies and may not retain your records after their services are terminated.

This article was reviewed and approved by the Chair of the Administration Advisory Committee, Dolores Lawrence, Managing Director at Blue Ridge ESOP Associates.

TEA’s Affinity Insurance Program Celebrates 30 Year Anniversary

By Jeff Gelburd, Vice President of Program Services, Murray Securus

A strong passion to serve ESOP companies and a reliable insurance company partner led to the ESOP Association-endorsed Executive Liability Insurance Program, which this month celebrates its 30th anniversary. The program continues to serve ESOP Association members by providing D&O, Fiduciary Liability, and Employment Practices Liability insurance protection.

Initially, the program offered standalone fiduciary liability insurance, but now includes insurance protection in the areas of: Directors and Officers Liability, Employment Practices Liability, Crime, and most recently Cyber Liability.

The ESOP Association’s initial endorsement of the program ensured it had a successful start. In the mid-1990’s the program and the number of members it served grew significantly when Great American Insurance Company became the endorsed insurer. This move allowed ESOP Association members to obtain valuable protection under one policy at a competitive premium.

At this point, the program’s offering was made available to the local insurance agents, simplifying the process for the ESOP company.

Today, The ESOP Association’s partnership with the Great American Insurance Company remains strong and steadfast. We now serve over 300 ESOP companies across the country, and offer an industry leading policy form. We provide insurance to all types of ESOP companies across all 50 states.

Our relationships with ESOP professionals and local insurance agencies and intermediaries has never been better, and we have developed an effective process in working with companies transitioning into a new ESOP as well as those doing a second transaction.

In fact, the very first ESOP company we placed fiduciary insurance with in January 1989 is still insured in our program!

Publisher’s Note: Jeff Gelburd initiated this insurance program in 1989, after working several years at a successful ESOP company. For information on this program, contact him at jgelburd@murrayins.com, or (800) 533-5271. Murray Securus, where Jeff works, is an employee owned insurance brokerage agency.

Washington Report

Looking Ahead in 2019 by Looking Back at 2018

By J. Michael Keeling, ESOP Association President

We just wrapped up a major year for U.S. citizens who have a significant personal stake in policy development.

Without exception, we in the ESOP community—including employee owners, from lowest paid to the highest paid; those who provide professional services to ESOP companies; the family members of those directly and indirectly involved with ESOPs; and all citizens who realize, as our forefathers did, that broad-based ownership is essential to the survival of democracy and individual
The theme for the 2019 Annual Conference is ESOPs Rock! And the lineup of ownership culture sessions, chapter showcases, technical sessions, Board of Directors track, and roundtable discussions for CEO, CHROs, and ESOP committee chairs will have you dancing in the aisles.

And don’t forget about the Annual Awards for Communication Excellence (AACE) and the Employee Ownership Month Poster competitions. By attending the conference you get to see firsthand how the AACE winners and runners up excelled at communicating with their employee owners and with the broader public about their ESOPs. Communicating about ESOPs isn’t always easy, but it gets a lot easier when you learn from the best.

As in the past, this year’s event offers a slew of great networking opportunities for everyone, including employee owners, executives, trustees, members of the board, and those providing professional services to ESOP companies.

Since the conference hotel is close to Capitol Hill, consider coming to the conference early and paying a visit to your elected officials. (It is always a good idea to check first with your chapter leaders, who may already be organizing a visit to your members in the House and Senate.)

And don’t forget the extra events that you can attend at night, including the Awards Banquet on May 22 and the Night Tour of the Monuments on May 23.

Or you can stick around after the conference and enjoy a weekend in DC. Catch a Nationals game, see the wreath laid at the Tomb of the Unknown Soldier in Arlington Cemetery, or watch the famous motorcycle parade on the following Monday. For fun options, see our website.

We always have been strongest when we seek support from every member of the House and Senate who values fairness and providing employees with a stake in the business.
In general, there were many good signals for ESOPs in 2018. But there is a ying and a yang to everything, and 2018 had some bothersome signals as well.

On the positive front, for the first time since 1998 a new law promoting employee ownership was enacted and signed by a President. The Main Street Employee Ownership Act is intended to make the Small Business Administration’s loan and loan guarantee programs more readily available to employee owned companies, both ESOPs and worker co-ops.

Another positive development: The House Small Business Committee adopted an amendment by the Chair, Rep. Steve Chabot (R-OH), to make sure that mandatory voting pass through was not required for ESOP companies to be eligible for SBA assistance. Led by Sen. Kirsten Gillibrand (D-NY), the support for the Chabot motion—and for the entire Main Street Act—was bi-partisan.

The Republican Chair of the House Ways and Means Committee (who, in the 2019-2020 session of Congress, is now the committee’s ranking minority member), included a pro-ESOP amendment that was very targeted to an uncommon situation, but one that resulted in a special UBIT when an ESOP and a family trust were co-owners of a company. His bill, that included several pro-retirement savings provisions, passed the House before Congress adjourned in 2018 by a very wide margin. (The Senate did not have time to consider the House bill before adjournment.)

The 115th session of Congress saw more pro-ESOP bills introduced than any session of Congress, ever. Bills were introduced by Sen. Bernie Sanders (I-VT), Sen. Tammy Baldwin (D-WI), and Sen. Gary Peters (D-MI). While these bills did not have bi-partisan support, they were clear endorsements of a position that more employee ownership was good for America.

And, of course, there were the two identical bills introduced in the House (H.R. 2092) and Senate (S. 1583) that were endorsed by The ESOP Association and the Employee-owned S Corporation of America (ESCA). Led by key members of the House and Senate tax committees—Representatives Ron Kind (D-WI) and Dave Reichert (R-WA) in the House, and Senators Pat Roberts (R-KS) and Ben Cardin (D-MD) in the Senate—126 members of Congress co-sponsored the bills.

Another sign of positive support on Capitol Hill: Sen. Roberts continued to push the Senate Finance Committee to give S corporations the same capital gains treatment that privately held C corporations currently receive under IRC 1042.

Beyond Congress, the first major academic institute for the study of employee ownership was established by Rutgers University—a university that ranked in the top 20 of all public universities.

The highly respected Aspen Institute placed a study and discussion about employee ownership on its agenda about the U.S. economy.

The Kellogg Foundation—which has hundreds of millions of dollars at its disposal—funded projects that conducted research and gathered data on employee owned firms.

Other major U.S. think tanks—the Heritage Foundation, the Third Way, and the Center for American Progress—continued to speak positively about employee stock ownership.

The list could go on and on. Overall, our community

In any Congress, sponsorship from all sides is needed not only to pass a specific ESOP law, but also to engender the mass, ongoing support on which our community relies for its very existence. One could argue that such support could be even more important in this Congress.

should be pleased and proud of the support we received in 2018.

So what are the “on the other hand” signs about ESOPs from 2018 that weren’t so rosy?

While the passage of The Main Street Employee Ownership Act showed positive support for ESOPs, its practical application for ESOPs may be limited. Transactions that exceed the SBA’s $5 million limit—which includes most ESOPs—do not qualify for the SBA’s loan program.

Another potentially troubling sign was the buzz from ESOP cynics—who seem to dominate the workforce at the Department of Labor, which oversees ESOPs. Some of these career federal workers seem dead-set against ESOPs, no matter how ethically we behave and no matter how generous a benefit we provide to employee owners.

A third troubling sign applies somewhat broadly and can be summed up with one phrase: lack of inclusiveness.

For example, there exists a group of well-intended believers in employee ownership who think that many, if not most, existing ESOPs do not go far enough to include employees’ voices in corporate decisions. In their view, ESOPs that do not meet their standards for inclusive governance are not “good” examples of employee owned companies and, therefore, are not to be favored.

So businesses that this group deems are not inclusive enough should be included in the ESOP family. There is some clear irony here.

From my perspective, I agree with the long-standing position taken by The ESOP Association, which—from its beginnings—has stated that the government should not impose management mandates on ESOPs.

Having visited more than 580 ESOP companies in my career, I have seen all sorts of cultures in ESOP companies. Some (not many, but some) of the most participatory companies went bankrupt. Some of those companies that had little participation ended up transferring millions of dollars to their departing employee owners. Some fell in between.
Some great ESOP companies are in the oil and gas business, some are in the coal business; others are “B” corporations and/or heavily involved in ‘green’ issues.

From where I sit, they are all ESOPs and all deserve our ongoing advocacy efforts and support.

And finally, while we enjoyed seeing a slew of positive ESOP bills get introduced in Congress, some of those bills had no Republican sponsors.

In any Congress, sponsorship from all sides is needed not only to pass a specific ESOP law, but also to engender the mass, ongoing support on which our community relies for its very existence. One could argue that such support could be even more important in this Congress.

So, where do we go now?

Let us celebrate the growing interest in broad based ownership that was evident in 2018. Let us leverage that interest to gain more support for the creation and expansion of ESOPs. And let us move into 2019 continuing to gather support for ESOPs that is bipartisan, which has long been our calling card and our strength.

ESOP Leaders Need Special Skills

By Ginny Vanderslice, Principal and Senior Consultant, Praxis Consulting Group

Leaders of ESOP companies are in an unusual position: They are leading the people who are co-owners of their companies. This gives leaders a greater opportunity to build a community of people with shared goals around which everyone’s efforts can be more easily aligned.

At the same time, this situation creates challenges that are not faced by leaders at firms with more traditional ownership structures. A key challenge for ESOP executives, for example, is helping employees to have a meaningful ownership experience.

Leaders need to consider questions such as:

- How much voice and authority for decision-making can and should be shifted to non-managers?
- What level of supervision is necessary?
- How should accountability and autonomy be balanced?

In addition, employee owners bring with them two sets of beliefs that can complicate the leadership role.

First, some employees have expectations about what it means to be an “owner.” These expectations arise most often from observing individual business owners or a small group of non-employees who are owners. Of course, the autonomy and authority that go with being a sole owner are not the same for a large group of employees who are co-owners of a company.

ESOP company leaders, then, will benefit from articulating the specific behaviors associated with shared ownership. Doing this in a way that retains the power of “ownership” to connect people and encourage engagement is both a challenge and an opportunity.

Second, many employee owners have learned that someone else sets goals, agendas, timelines, priorities, policies, and makes decisions about changes or improvements. Seeing themselves as taking more responsibility—either individually or within their teams—may involve a major shift in their identity.

Similarly, suggesting changes to increase efficiency or improve company performance might have seemed unimportant or unwelcome in employees’ prior jobs at more traditionally owned business. Knowing how to help employee owners make these kinds of shifts is important if ESOP company leaders want to secure the performance advantages that can result from employee ownership.

Fortunately, there are now decades of research (thanks largely to the work of academics associated with Rutgers) to guide leaders in understanding the factors that link
employee ownership with performance. Among those factors are communication, transparency, professional development for employees, opportunities for engagement and participation, autonomy, and short-term performance-based incentives.

However, there is no one-size-fits-all recipe for how best to implement these components. ESOP companies have successfully leveraged employee ownership to drive business performance by building a “high-performance ownership culture” in a variety of different ways. While leaders of these companies seem to things in common—such as valuing the potential of each employee owner—they have implemented different strategies and mechanisms for supporting engagement and communicating financial information.

Overall, ESOP company leaders need the leadership skills and attributes required of all effective leaders, but also must need the skills to respond to the special circumstances of leading employees who are co-owners of the company.

Gathering to exchange ideas, perspectives, and experiences with other ESOP leaders can be an invaluable way of helping leaders leverage the full potential of employee ownership. In the ESOP community, attending chapter meetings and conference roundtables can be extremely valuable.

For more intensive learning and development, the CEO Leadership Program, funded by the Employee Ownership Foundation, offers ESOP executives the opportunity for extensive instruction, information sharing, and networking in an intimate setting. Graduates of the program serve as an ongoing and unique resource to each other.

Research has shown that when companies combine employee ownership with certain key operational components, they can outperform their peers. This is what makes employee ownership a superior organizational ownership structure.

To demonstrate this potential to the business world, we need more leaders who excel at leveraging the potential power of employee ownership. The more that ESOP company leaders share their experiences with one another and invest in their own development, the more successful ESOP companies will be. And that will only help gain greater support for maintaining and advancing ESOPs in the future.

Ginny Vanderslice is the program’s Academic Director. In 2017, she received The ESOP Association’s Life Service Award for her contributions to employee ownership.

Publication Highlight

How the ESOP Really Works

Designed to provide an accurate, concise explanation of the design, structure, and operation of employee stock ownership plans (ESOPs), this publication targets business owners seeking a succession plan, companies considering ESOP implementation, as well as companies that already have an ESOP in place and want an orientation tool for employees. It describes the basic legal and financial structure of ESOPs and the various options available to companies that establish an ESOP.

Members $12.00 / Non-Members $38.00

Sign in to our website, www.esopassociation.org, or call (202) 293-2971 to purchase.