ESOP Report
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INSIDE:

PRESIDENT'S PAGE 2
ESOPS Are Not Socialism

OWNERSHIP ADVANTAGE 3
The Emotional Side of ESOPs

LEGAL UPDATE 4
Recent Decisions Considering Arbitration Clauses in Pension Plans

DEADLINES & IMPORTANT DATES 5

THE WASHINGTON REPORT 6
EBSA Goes Too Far

ADVISORY COMMITTEE ON MINISTRATION 8
Partial Plan Terminations: An Analytical Approach for ESOPS

CORNERSTONE 11
Economic Performance Survey to Be Fielded in September

Meet Luke Deets, Employee Owner of the Year

Luke Deets of McCownGordon Construction (MGC) is the 2018 Employee Owner of the Year. We recently had a chance to talk to Luke and figure out what makes him a champion for employee ownership.

Background

Luke joined MGC in February 2010 and had been on the job almost exactly five years when the company made a dramatic leap into employee ownership: On January 1, 2015, MGC immediately became 100 percent employee owned.

The sudden change—while positive—was confusing to some employees. The main obstacle that the company had to overcome, says Luke, was "articulating to employee owners what an ESOP can do for them."

There was an immediate need for education and communication, and Luke answered the call by serving as an inaugural member of the company's ESOP communications committee, OneMGC. He started out leading the committee's communication team; in 2016 he took over the education team, and in 2017 he became chair of the entire committee.

Communication Plan

To help his fellow employee owners better understand the ESOP, Luke took immediate action. He wrote newsletter articles, developed printed materials, and acted as the company's ESOP liaison to employees.

> ***The main obstacle that the company had to overcome, says Luke, was "articulating to employee owners what an ESOP can do for them."***

He also spearheaded efforts to create a communications plan, which focused on developing these elements:

Town hall events. The company now holds annual town hall evens, and Luke believes these have been particularly successful. MGC found that associates were reluctant to ask questions about the ESOP in daily conversation, but questions asked in town hall events have started spurring more lively and engaged conversations.

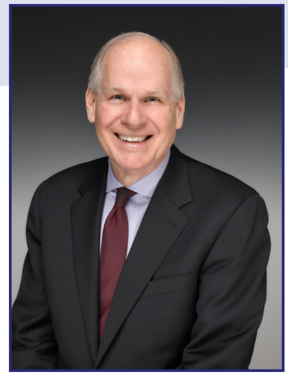
ESOP onboarding. In their orientation materials, new employees now receive an ESOP quick reference guide along with full plan details. OneMGC committee members follow up by meeting with new employees in small groups to explain the ESOP and answer questions. Luke has been actively engaged in these small group discussions.

Financial transparency. Luke has

Continued on page 9

STRAIGHT *from the* PRESIDENT

J. Michael Keeling
President,The ESOP Association



ESOPs Are Not Socialism

In the early years of the employee ownership movement, some members of Congress and their advisors had a knee-jerk reaction: ESOPs, they decided, were a form of socialism. This completely ignored the view of Dr. Kelso, who originated the ESOP model.

Dr. Kelso did not feel it was wrong for successful men and women to own shares of the companies they built. To the contrary, he felt corporate ownership was a good thing, and that sharing ownership with those who had a hand in building a company and making it successful was simply more of a good thing.

ESOPs, he felt, were the epitome of the most successful economic system ever developed—one based on owning private property in a free enterprise economy.

His view reflected one held by our forefathers, who felt we should strive for ownership of productive assets by as many people as possible, not a select few. That view is captured strikingly in the first 50 or so pages of *The Citizen's Share: Putting Ownership Back into Democracy*, by professors Joseph Blasi, Richard Freeman, and Douglas Kruse.

In those pages you will find a stirring account of an incredible fact: Many of our forefathers, who disagreed with each other on most things, agreed that broad-based employee ownership could be fundamentally and vitally important to our nation's survival.

Such a meeting of the minds was a precursor to the bipartisan support you find for ESOPs in Congress today. As time has marched on, more elected officials—regardless of party affiliation—agree that ESOPs are a great way to give employees the chance to profit from their efforts.

There are no government handouts in ESOPs—just a chance to benefit from one's labor. And what could be more American than that?

In the midst of this bipartisan support, I do see a red flag, however.

The 2016 election highlighted the plight of working men and women who had grown disillusioned by the demise of good paying jobs in once-prominent U.S. industries. Now, some super liberals and media pundits are proclaiming a "new" day is coming in which a new generation of voters will support some form of "socialism." These voters, we are told, will elect men and women seeking to solve wealth and income inequality by installing more "socialist" government programs.

I cannot predict what lies ahead in the minds of voters. But I can offer this caution: If ESOPs are once again labeled one of the "socialist" solutions to the ills of our nation, bipartisan support of ESOPs will suffer.

Labels and monikers matter. Once labeled, it can be hard to escape that label—even if it is not accurate.

The history of the ESOP movement, from the very beginning of our country until today, shows that we are best served by avoiding labels and focusing instead on what our movement offers: a chance to reap the rewards of one's efforts.

And that is enough.

ESOP Report The Voice of The ESOP Association

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The Emotional Side of ESOPs

By Kellee Kroll, Principal

Communication is an essential part of employee ownership culture. But do we have it all covered? Of course, employee owners need to understand what the benefit plan is, how it works, and what it can mean to them. So there often is a focus on communicating the specifics of the plan, such as how employee owners:

- Get into the plan.
- Get their shares.
- Become vested.
- Receive payments after they leave.

The annual statement highlights account activity in numbers. Companies share how employees' everyday roles can impact profitability.

This is all good information. But there is more to an ESOP and an employee ownership culture than just facts, data, or plan rules. There's also an emotional side to ESOPs, starting at the beginning and continuing throughout the life of the plan.

Parting Is Sweet Sorrow

Change is never easy. When a business owner chooses the next chapter of life for himself or herself and the company, this typically gives rise to a mix of feelings and emotions.

Owners have put much of their heart, time, and effort into growing a company for their family, the employees, and the community. Even though the ESOP is a positive option, the change can lead to both excitement and apprehension.

I can recall many new ESOP meetings I have seen that were filled with a combination of tears and smiles.

Often, the heartfelt message from owners announcing an ESOP can be an invaluable opportunity. Consider capturing that message for your current employee owners and for those who will join the company at a future date. Showing this message to new hires can be a powerful way of demonstrating why the employee ownership route was chosen.

A Sense of Belonging

We spend so much time at work that we want to feel good about it. We want to feel that we are giving value, are appreciated, and are excited to be there. The ESOP may help meet some of the intangible needs for engagement.

Being employee owned is about a team working together toward a common goal, one that is bigger than any individual employee owner. Connecting employees across the company can create an overall unity and kinship that employees value highly, along with their pay and benefits packages.

Are you getting this kind of employee engagement? If not, it may be time to promote the solidarity that can come from being connected through employee ownership.

Pride in Ownership

There can be great satisfaction in a job well done. But how is this different when you're also an employee owner?

Having a stake in the company's success—both personally and financially—goes beyond creating an incentive to do your best work. You are doing your part to take care of yourself, your family, and your colleagues by helping the company achieve long term success.

Often, the heartfelt message from owners announcing an ESOP can be an invaluable opportunity. Consider capturing that message for your current employee owners and for those who will join the company at a future date.

When employees are recognized for being a catalyst to that success, and given a stake in the outcome, they're more likely to take pride in what they do and to care about making a positive impact.

Go for the Heart

Communicating the facts about your ESOP and employee ownership culture are vital, no doubt. But if you stick only to the facts, you could be missing an opportunity to engage your employee owners on a different and deeper level.

Next time you are taking a look at your communication efforts, ask yourself whether you have captured the heart of *your* ESOP message. It just might be the thing you are missing.

Author's Note: The content in this article is educational only and is not intended to provide legal, accounting, investment advice, or tax advice.

Legal Update

Recent Decisions Considering Arbitration Clauses in Pension Plans

By: Larry Goldberg, Partner, and Molly Lateiner, Associate, ESOP LAW GROUP

In *Munro v. University of Southern California*, the U.S. Court of Appeals for the Ninth Circuit refused to enforce an arbitration agreement against participants in the USC Retirement Savings Program and the USC Tax-Deferred Annuity Plan. The Ninth Circuit affirmed the lower court holding that the arbitration agreements signed by the plans' participants were not sufficient to bind the plans to arbitration. The plans' participants were permitted to continue their lawsuit against the plans' fiduciaries.

The participants alleged various breaches of fiduciary duty in administration of the plans and sought financial and equitable remedies to benefit the plans. These included:

- A determination as to the method of calculating losses.
- Removal of breaching fiduciaries.
- A full accounting of plan losses.
- Reformation of the plans.
- An order regarding future investments.

All of the plaintiffs/employees signed an arbitration agreement as part of their respective employment agreement with USC. The various agreements covered claims for violations of federal law, including ERISA, and required arbitration of all claims that either the employee or USC has against the other party to the agreement.

The lower court found that the participants' fiduciary claims were "on behalf of the plans" and that the plans themselves did not consent to the arbitration clauses in the individual employment contracts. The court seemed especially concerned about fiduciaries using participants' arbitration agreements as a means of mitigating their ERISA obligations and impeding ERISA enforcement. "[A]llowing such arbitration agreements to control participants' Section 502(a)(2) claims would, in a sense, be allowing the fox to guard the henhouse." (*Munro v. Univ. of S. Cal.*, C.D. Cal., No. 2:16-cv-06191, 3/23/17)

While the Ninth Circuit didn't go as far as saying that an ERISA claim should never be subject to arbitration, the Ninth Circuit agreed with the lower court to a certain extent, citing prior holdings related to the Federal Arbitration Act (FAA) that "arbitration is a matter of contract" and courts' involvement with arbitration agreements is limited to deciding whether a valid arbitration agreement exists and, if so, whether the agreement encompasses the dispute that is at hand.

Accordingly, the Ninth Circuit found that the arbitration agreements only encompassed claims brought on behalf of the employees as individuals. The claims in the instant matter were distinguishable because they were brought on behalf of the plans.

In short, the claims fell outside the scope of the employment agreements.

The Ninth Circuit analogized *Munro* to its recent decision in *United States ex rel. Welch v. My Left Foot Children's Therapy, LLC,* in which it found that an employment arbitration agreement did not cover *qui tam* claims brought by an employee on behalf of the government under the False Claims Act because the claim belonged to the government.

> ***The Ninth Circuit found that the arbitration agreements only encompassed claims brought on behalf of the employees as individuals. The claims in the instant matter were distinguishable because they were brought on behalf of the plans.***

In both cases, the Ninth Court noted, *qui tam* relators and ERISA Section 502(a)(2) plaintiffs were not seeking relief for themselves. In the former case, the plaintiff was seeking recovery only for injury done to the government. In the latter case, the plaintiff was seeking recovery only for injury to the plan.

To this point, USC argued that defined contribution plans comprise individual accounts and therefore, any relief would benefit the plaintiffs on an individual basis. The Ninth Circuit rejected this argument, distinguishing the precedent supporting USC's argument as limited to claims of mismanagement of individual accounts and not, as was the case here, claims seeking remedies to benefit *all* affected participants and beneficiaries of the plans alike.

An open point left by *Munro* is whether an arbitration clause would be enforced if included in the plan itself, rather than in a separate employment agreement. In *Brown v. Wilmington Trust, N.A.* (USDC S.D. Ohio, Western District, 7/24/2018), we seem to get one step closer. In *Brown*, a former employee of Henny Penny Corporation sued the ESOP Trustee alleging a breach of ERISA fiduciaries duties, largely relating to an allegation of overpayment for the stock by the ESOP.

The Henny Penny ESOP, adopted in 2014, was amended in 2017 to add a "Mandatory and Binding Arbitration Procedure." This procedure broadly covered any claims under the ESOP, whether fiduciary or non-fiduciary. The provision also prohibited any claim for group benefits, such as a class action.

The *Brown* court first noted that under the FAA, there are two relevant inquiries for the court:

1. Whether a valid arbitration agreement exists and if so,
2. Whether the agreement encompasses the dispute at hand.

Plaintiff Brown argued that the 2017 ESOP amendment did not apply to her because she terminated her employment with Henny Penny in May 2015 and was cashed out of her ESOP account in November 2016. Henny Penny intervened and, with the defendant ESOP trustee, argued that under ERISA, the fiduciary claims against the ESOP trustee were claims of the ESOP, not of the individual plaintiffs, implying that Ms. Brown's employment status was not relevant. Note that this is the argument the plaintiffs' used in the *Munro* case to establish that the separate arbitration agreements were not applicable to a suit to enforce rights of the plans.

The district court sided with plaintiff's argument and found the plaintiff was not bound by the Arbitration Procedure. It appears the judge hung his hat on the fact that the plaintiff had both terminated employment and received a complete benefit distribution prior to the time the Arbitration Procedure was added to the ESOP. But, the judge hinted a concern, which was repeated in the *Munro* case, that there may be inequity in the potential defendant being able to unilaterally restrict claims against itself to mandatory arbitration.

The court then examined the exact wording of the terms of the Arbitration Procedure to determine if it applied to the claims at hand. The court first noted that the clause applied to "participants" and that the plaintiff was not a participant under the ESOP's definition because she had terminated employment and received a complete benefit distribution.

The defendant ESOP trustee countered that, under ERISA, if a plaintiff is not a participant, she does not have standing to even bring the claim. The court, relying on Sixth Circuit precedent, found that an individual who has been cashed out of a plan has standing to sue even though by the plan's definition section, the individual is no longer defined as a participant.

The long-term impact of *Munro* and *Brown* remains to be seen. Both were decided on their specific facts. It may be possible to extrapolate from them the manner in which an ESOP arbitration provision could be fashioned that would be generally enforced in fiduciary cases.

It also remains to be seen how to reconcile these cases with *Epic Systems Corp. v. Lewis,* U.S. S.Ct. (5/21/2018) wherein the Supreme Court held that employers could require employees to *individually* arbitrate employment disputes and waive class action claims. Notwithstanding the uncertainty in the law, an ESOP plan sponsor also must consider whether an arbitration clause is even desirable for fiduciary claims. The deterrent effect of arbitration must be weighed against the risk of an unreviewable adverse arbitration decision.

Calendar of Deadlines and Important Dates

Sept. 5-21	Economic Performance Survey Fielded
Sept. 12	Early Registration Ends for Las Vegas Conference & Trade Show
Oct. 1-31	Employee Ownership Month
Nov. 8-9	Las Vegas Conference & Trade Show
Nov. 11-14	Leading in an Ownership Setting: The Program for CEOs, Session II
Feb. 1	Deadline for entering AACE and Employee Ownership Month Poster competitions
Feb. 8	ESOP Professionals' Forum

To see all national and chapter meetings, visit us online at: www.esopassociation.org.

the Washington Report

By J. Michael Keeling
President
The ESOP Association

EBSA Goes Too Far

The Employee Benefits Security Administration (EBSA)—the section of the Department of Labor that regulates all ERISA plans, including ESOPs—shows no evidence of altering the harsh enforcement practices it began in 2010.

EBSA continues to:

- Bring lawsuits claiming that employees were "ripped" off by owners who sold stock to a company ESOP at a value significantly above fair market value—even when the ESOP is sold shortly thereafter for an even higher amount.
- Issue subpoenas before an audit even begins. These subpoenas often demand every iota of information surrounding the ESOP transaction, often going back eight or more years.
- Demand ESOP companies waive the law's statute of limitations, by forcing all men and women who were the advisors to the ESOP company—lawyers, trustees, appraisers primarily—to provide records.
- File pleadings that use the same harsh logic the agency used from 2010 through 2016.

The result of all these actions is that EBSA's enforcement of the law is costing thousands and thousands of dollars for ESOP companies that are being audited or sued.

Misplaced Hope

There is no denying that the ESOP community assumed that with a new administration proclaiming to be more supportive of private sector businesses, we would see a different kind of EBSA.

The EBSA of the past (and now present) has chosen to regulate ESOPs not through regulation, but litigation. This approach ignores the law set forth in the Administrative Procedures Act, which says private citizens are allowed to voice their reactions to regulations proposed by the Federal government.

EBSA's leaders have bemoaned the fact the agency lacks funding from Congress (taxpayer money) to address the ESOP abuses it feels are prevalent. (Those abuses seem to be focused on private ESOP companies, most of which have fewer than 100 employees.)

DOL, it seems, has much more money to spend dragging out audits, filing claims, and paying millions of dollars to outside experts who claim in court that professional, certified, appraisers are totally wrong in how their profession values the stock of a private company acquired by an ESOP.

That view is *not* shared by the American Society of Appraisers. That organization filed an *amicus brief* blasting the DOL "theories" of how to value private company stock acquired by an ESOP.

Keep in mind, the ASA knows the most about best practices in valuing property that is not publicly traded. The DOL response was dismissive of the ASA's points, stating more or less (but not as explicitly as it did in a 1993 lawsuit), that a leveraged ESOP should acquire stock only at a reduced value because borrowed money was used to purchase the stock. (More on that below.)

Why the DOL Negative View of ESOPs?

Why does EBSA have a negative view of ESOPs? The answer has to do with how Congress approved ESOPs as an exception to the general ERISA law that assets of a retirement savings plan must be diversified, not concentrated in one asset, such as company stock.

It is felt that career employees of EBSA, since the late 1970's, always felt Congress made a big mistake authorizing ESOPs as a retirement savings plan.

The version of ERISA that passed the House and Senate in 1975 was altered at the last minute by the House and Senate Conference Committee, which worked out the differences between the two versions. The committee added an entirely new provision that exempted ESOPs from the general rules on diversification and prohibited transactions.

This action was not reviewed by the Department of Labor, which enforces the prohibited transactions provisions of ERISA. (In fact, there is no evidence the chair of the Conference Committee, Sen. Russell Long, consulted with members of the Committee who served on the House and Senate Labor Committees.)

Even more irritating to the men and women who felt the diversification exception for ESOPs was wrong, Congress did something unique over the next 20 or so years: It added tax incentives for the creation and operation of an exception to the rule—ESOPs.

Having Congress promote "an exception to the general rule" is seen by critics of ESOPs as an unjustified undermining of the requirement that retirement savings be diversified and parties of interest not benefit by creating an ERISA plan.

Debt in ESOP Purchases

The key point often made by DOL and EBSA's career leaders is that acquiring a retirement plan asset with debt is less valuable than acquiring assets without debt. In other words, EBSA employees would say, stock that is worth $10 and is acquired with $5 of financing is in reality worth only $5.

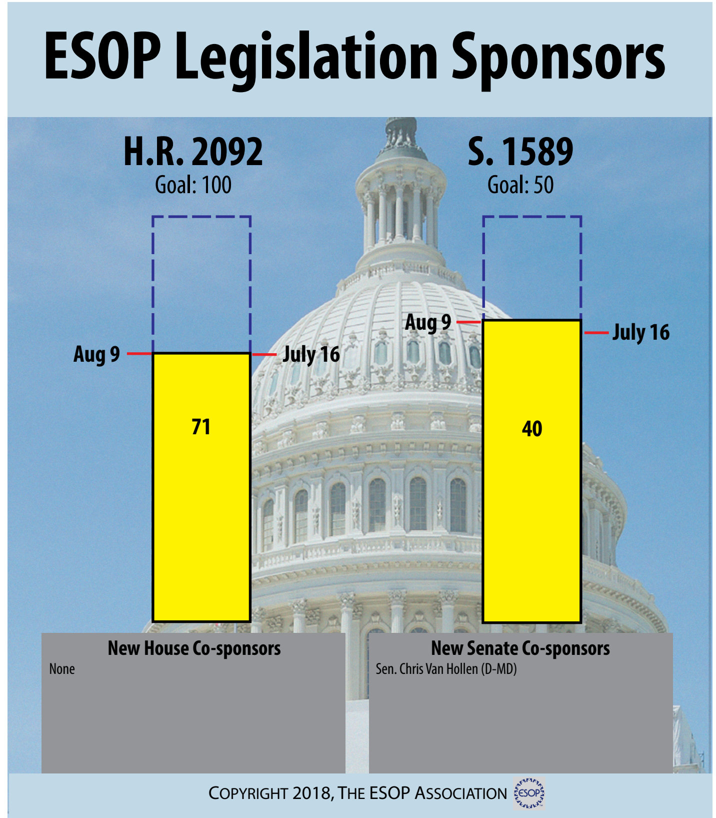
The key point often made by DOL and EBSA's career leaders is that acquiring a retirement plan asset with debt is less valuable than acquiring assets without debt. In other words, EBSA employees would say, stock that is worth $10 and is acquired with $5 of financing is in reality worth only $5.

As a result, EBSA would argue, the ESOP should pay that amount ($5), or a little more based on near term economic projections, but not $10.

This view does not fit the notion that the market value of an asset is what a willing buyer and willing seller agree to. No willing seller will sell a $10 asset for $5 or so because the purchaser borrowed money to acquire the asset.

Time to Speak Up

The ESOP community needs to make its voice heard about the negative treatment of ESOPs by EBSA.



Elections are coming up, and those seeking election or re-election to Congress will be interacting with the most important people in the world to them—you, the voter. And they will be doing that primarily in October, Employee Ownership Month.

Take time to interact with those seeking office, preferably by hosting them at your company.

Ask them to support pro-ESOP proposals such as S. 1589 and H.R. 2092, if they have not done so already. And ask them to join their colleagues in telling EBSA that guidance that is in sync with Congressional support for ESOPs is needed—not the current approach of regulating ESOPs with litigation, or of harassing audits that cost ESOP companies large amounts of money that reduces the value of their ESOP stock.

Enough is enough.

The Main Street Employee Ownership Act Signed into Law

The Main Street Employee Ownership Act was signed into law by President Trump on August 13.

The act was introduced in the House in March by Rep. Nydia Velazquez (D-NY). The office of Sen. Kirsten Gillibrand (D-NY) was instrumental in devloping the bill and working with Rep. Velazquez to both promote the bill and garner bipartisan support. That support led to passage in the House by a voice vote on May 8, exactly two months after it was introduced.

The bill is designed to make it easier for small companies to make use of the Small Business Administration's 7(a) program to finance their transition to become employee-owned businesses, such as ESOPs.

In announcing the passage of the legislation, Rep. Velazquez's website stated that ESOPs "have a proven track record of success, with companies that transition to the employee-ownership model seeing an increase in productivity by 4 to 5 percent."

Rep. Velazquez was quoted on the page as saying: "We know that workers at employee-owned enterprises tend to be paid better and achieve higher rates of financial security. I am proud to have partnered with Senator Gillibrand to advance this important legislation."

Partial Plan Terminations: An Analytical Approach for ESOPs

Authored by Lynn Archer, Attorney
Reviewed by: Kevin T. Rusch, Director Blue Ridge Associates

An important consideration for ESOP plan sponsors contemplating mergers, acquisitions, or potential responses to an economic downturn, is the financial impact of a partial plan termination. A partial plan termination occurs when a significant percentage of employees participating in a qualified plan are terminated or excluded from the plan by amendment. (Internal Revenue Code of 1986, as amended Section 411(d)(3))

When a partial plan termination occurs, all of the "affected employees" become fully vested in their plan benefits—which includes the employer contributions and matching contributions.

Who are the "affected employees?" There are differing interpretations, which will be discussed further herein.

The IRS has issued Revenue Ruling 2007-43, 2007-28 I.R.B. 45 (Rev Rul 2007-43) in response to a taxpayer request outlining a scenario in which the closure of one of four plants resulted in the termination of 23 percent of the plan's participants. The over-arching rule of determining partial plan terminations depends on the "facts and circumstances" of each case.

A more instructive and helpful rule is the presumption adopted by the IRS in Rev Rul 2007-43 from a 7th Circuit court decision in *Matz v. Household International Tax Reduction Investment Plan* (388 F.3d 570, 7*th* Cir. 2004): If there is a 20 percent or greater reduction in plan participants, a partial plan termination has occurred.

Of course, there is some room for interpretation with respect to:

- Whether the employee terminations were employer-initiated or voluntary (meaning that employees who quit should not be included as "affected employees").
- Whether voluntary terminations that do not relate to any sort of "constructive termination" ought to count for purposes of the 20 percent guideline.
- If the plan sponsor's normal turnover rate (notwithstanding any economic distress) is at or near 20 percent generally.

In determining the pool of "affected employees," the best data available will be the annual year-end census report conducted by the plan's third-party administrator to determine eligibility. The calculation is a ratio of the number of participating employees who had an employer-initiated severance, divided by all of the participating employees, plus employees who became participants during the period in question.

It is important to note that in creating this ratio, both vested and non-vested participants are included when calculating the turnover rate. But severance from employment due to death, disability, or retirement is *not* included in the numerator, as those circumstances are not considered "employer-initiated severance." However, an employee's severance *is* considered employer-initiated if it was caused by outside events, such as an economic downturn.

Generally, the time frame in which the 20 percent termination ratio is measured is a given plan year. However, if the facts and circumstances show that a multi-year reorganization or financial downturn

Generally, the time frame in which the 20 percent termination ratio is measured is a given plan year. However, if the facts and circumstances show that a multi-year reorganization or financial downturn resulted in a partial termination, the time frame could be longer.

resulted in a partial termination, the time frame could be longer than one year. Or, in the case of a short plan year, the time frame is that short year plus the immediately preceding plan year.

On the following page is a numerical example of this analysis. Here, the term "turnover rate" means the ratio of affected employees to the entire participant population.

The complexity of this analysis generally causes plan sponsors to adhere to the "bright line" 20 percent guideline, for the sake of simplicity.

However, unlike a 401(k) or profit-sharing plan (which might just mean fully vesting matching contributions in a partial plan termination, depending on the plan), fully vesting employer contributions in an ESOP can pose a significantly higher cost to the plan sponsor in terms of repurchase liability. It also can cause administrative difficulties if terminated employees are paid out their vested balance upon leaving, and the non-vested balance is immediately forfeited, which requires the plan sponsor to make additional contributions to make the participant 100 percent vested plus contributions to make up for lost earnings.

(This concise outline of plan disqualification was written by Jessica Stricklin of Baker Botts LLP in her article "Preparing for a Partial Plan Termination—Considerations and Consequences.")

A tax year "closes" three years after the tax return is filed, so generally "open tax years" are the last three years.

It is critical to know how much it will cost to fully vest participants affected by a partial plan termination. One goal should be ensuring that the funds spent making this determination do not exceed the repurchase liability cost of giving the vesting credit.

Partial Plan Termination

38	Total terminations during applicable period
-23	EE's terminated who are not plan participants
- 1	Terminations due to death, disability, normal retirement age
14	**Subtotal = Numerator for turnover rate**

14	Participants adeed during the applicable period
+ 95	Employees who were participants first day of applicable period
109	**Subtotal = Denominator for turnover rate**

$$\frac{14}{109} = \textbf{12.84 Percent Turnover Rate}$$

A further complication could arise if a participant is terminated as part of a partial termination, and then later rehired. This set of circumstances would require the third-party administrator to track two separate accounts for this employee until he or she becomes 100 percent vested in both.

The consequences of a plan sponsor's failure to fully vest the affected employees could result in the disqualification of the plan. The tax consequences of plan disqualification include:

- For open tax years, the employer will lose its deduction for non-vested contributions made to the plan for such years.
- For open tax years, plan participants must recognize income with respect to their vested accrued benefits.
- For open tax years, the plan's trust will recognize income on its earnings.
- Distributions from the plan will not be eligible for rollover into another tax-qualified vehicle.

It is also helpful to remain aware of the theory behind the vesting credit given as a result of a partial plan termination: The plan sponsor has reduced benefits to a significant group of participants, despite having adopted a tax-advantaged retirement plan intended to provide a retirement benefit, and so such affected participants should receive the benefit of full vesting.

In summary, we encourage plan sponsors to keep partial plan terminations in mind when making the cost/benefit analysis for reductions in force, restrictive plan amendments, or corporate transactions. The 20 percent guideline is helpful as the first step of the analysis, but it should not be the end of the thought process if there are mitigating factors that a plan sponsor believes should be taken into account in overcoming the presumption in favor of partial plan termination.

From Cover Story, page 1

successfully encouraged the company to be more financially transparent. As a result, MGC now shares with employees the firm's working capital, equity, revenue, backlog, and profit per employee.

Lessons Learned

Luke's advice for companies with a new ESOP: "Take the time to understand what employee ownership is, what the opportunities are, how you can influence the ESOP, and how you can take that opportunity to drive engagement within your organization."

Another lesson is to be patient. While the efforts of the OneMGC Committee to educate employee owners have helped, it took time for employees to see the tangible results of participating in the ESOP. Until that history of success was established, and until their account balances started to grow, employee owners had to simply trust that the ESOP would benefit them.

Now that the ESOP has a few years under its belt, Luke happily reports that things are starting to move more smoothly.

Updated Press Kit Now Available Exclusively for Members

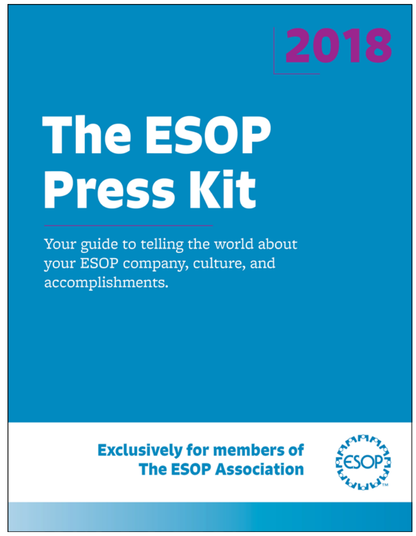
The 2018 Press Kit (formerly known as the Press & Event Planning Kit) is now available exclusively to members of The ESOP Association.

In mid-August, the kit was posted on The ESOP Association website and e-mails with links to the updated document were sent to the primary contacts for our corporate members.

The Press Kit has been significantly revised this year and includes more insights and advice to help you tell the world all about your ESOP company, culture, and accomplishments.

While the document has been updated in time to help you communicate during October's Employee Ownership Month, it truly can be used at any time throughout the year. So be sure to read it and keep it in mind for all your important events, such as:

- When you host an elected official.
- When you announce a major business event, such as a merger, acquisition, or opening a new location or product line.
- When you announce an event related to your ESOP, such as selling more or all of the company shares to the ESOP.



Don't be shy about telling your story! Doing so benefits the *entire* ESOP community. The perceptions of elected officials, policy leaders, and analysts at key think tanks are formed from individual experiences and examples.

Each time our members demonstrate the benefits ESOPs provide, we all gain.

AACE and Employee Ownership Month Poster Competitions Open!

The ESOP Association's premiere annual competitions—the Annual Award for Communications Excellence (AACE) and the Employee Ownership Month (EOM) Poster competition—are now open and accepting entries.

The big news for this year? The entry process is a little different for both competitions, and first-time entrants have reason to take heart.

What's New

Here is a quick look at what is different this year.

When submitting AACE entries in the video category, you no longer need to put content in a binder. Instead, there is a field in the digital entry form where you can enter a short description of your video. Instructions on what to write are included in this year's rules.

For the EOM Poster competition, we will no longer return the physical materials submitted. In the past, some members wanted their entries returned so they could display them during Employee Ownership Month. We think this is a terrific idea, however displaying the original entry typically is problematic because it is usually well worn by the time the judging is over.

A better option is to print a fresh copy and to display that new poster.

First-Timers Excel

Over the years, many members have felt that entering these competitions was too intimidating. To help newcomers better understand the process, we added tips and advice to last year's rules and entry form. We encourage all new entrants to review this part of the rules, which returns to this year's document.

Do the new tips help? There is some evidence that they do: In last year's AACE competition, nine out of 28 winner and runner up awards were given to companies that entered for the first time! If they can do it, so can you.

Key Facts

The deadline for entering this year's competitions is Feb. 1, 2019. Please plan ahead to ensure that your physical materials are received by The ESOP Association by the deadline.

A key aspect of both competitions that is unchanged: There is no entry fee! The ESOP Association covers all the costs of running the competitions, processing entries, conducting judging, displaying entries at the Annual Conference in May, and hosting the Awards Banquet where winners are announced.

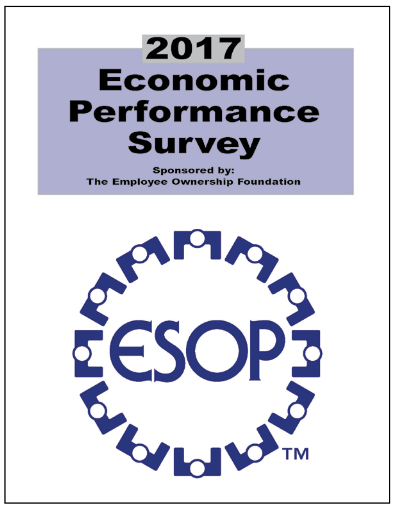
Why? We know that communicating with your community, customers, elected officials, and current and prospective employee owners is vital to your success, and these competitions help share good practices that make all ESOP companies stronger.

Economic Performance Survey to Be Fielded in September

The annual Economic Performance Survey—which gathers invaluable information about the performance of our corporate members and shares the aggregated results with members of the media and with policy leaders—will open on Wednesday, Sept. 5. On that day, an e-mail with a link to the survey will be sent to the primary contact for each of our Corporate Members. (If you do not receive the e-mail, please check your e-mail system's spam filter.)

Not sure if you are your company's primary contact? If you receive the invoice for your ESOP Association dues, then you are listed as the primary point of contact in our membership records.

The survey **takes only two minutes to complete and will remain open from Sept. 5 to Sept. 21.**



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Final results will be shared with all Corporate Members, and can provide a valuable benchmark to help you assess your performance against that of your peers.

To see the results of last year's survey (see the image at left for a glimpse of last year's report), please visit the ESOP Store on our website, and scroll down to the section labeled Downloadable Products.

The Economic Performance Survey is sponsored each year by the Employee Ownership Foundation, which is dedicated to researching ESOPs and employee ownership. The Foundation sponsors a variety of efforts, including the Kelso Fellowships, which conduct academic research on employee ownership and are administered by Rutgers University.

For more information on the Employee Ownership Foundation, or to donate and support its efforts, visit www.employeeownershipfoundation.org.

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New Look for *ESOP Report* Coming in September!

The ESOP Association is refreshing its brand and one of the most noticeable changes you will see is in our September issue of *ESOP Report*. You'll find the same great content you always do, but in a new presentation we think you are will really like.

Keep an eye out for our new look next month!