



Assessing the Risks of ESOPs for Employees, Managers, and Business Owners

What the Research Tells Us

COREY ROSEN

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The National Center for Employee Ownership
510-208-1300
customerservice@nceo.org
www.nceo.org

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INTRODUCTION

Consider these anecdotes about employee ownership:

In 2014, Forbes ran a [story](#) about Cathy and Deborah Bush. “On the same day 23 years ago, Cathy and Deborah, then aged 19, walked into the WinCo store and applied for jobs. Each of the women was already a young mother and they were looking for steady work to provide for their families. Retirement savings weren’t on their radar screens,” the story notes. By the time of the story, Cathy, who held various front-line jobs at the 100% employee stock ownership plan (ESOP)-owned supermarket chain, had almost \$1 million in company stock in her ESOP account. Deborah previously worked at a variety of jobs, including 17 years as an administrative assistant in a doctor’s office. Her 401(k) came to about \$30,000.

In 1995, United Airlines became majority-owned by an ESOP. All but the flight attendants agreed to reduce their wages in return for shares in the ESOP. United had been on the verge of bankruptcy, but saw impressive improvements in the first year after the plan was set up. Employees formed teams to solve problems and save money. The company heavily promoted being employee-owned. But changes in management and union leadership, plus problems plaguing the entire industry, drove the company into bankruptcy five years later, along with every other carrier except Southwest (which had its own employee ownership plan). Detractors said the ESOP failed and imposed too much risk on employees.

In 1983, the 199 employees at Springfield Manufacturing, a rebuilder of truck engines in Springfield, Missouri, became sole owners of the company through direct employee purchases by key employees and an ESOP that owned a minority of the stock. The company eventually became SRC Holdings, branching out into related businesses and becoming a 100% ESOP-owned company. It created the Great Game of Business, a highly successful model for employee engagement now copied by

hundreds of other firms. In 2023, SRC announced that its stock price as an employee-owned company had grown by over one million percent.

Piggly Wiggly became the largest ESOP-owned company in South Carolina. For a time, the ESOP performed very well, but management missteps led the company into financial difficulty, and it was sold at a fraction of its initial ESOP value to other supermarkets. Employees sued over alleged management self-enrichment, leading to a settlement.

Both advocates and opponents of employee ownership frequently cite anecdotes such as these. Stories are persuasive, but given that there are thousands of ESOPs, they are easily misleading.

ESOPs have had remarkably broad support across party and ideological lines. There have been 18 bills in Congress to promote ESOPs, and they have all passed with virtually no opposition. They have been championed by Ronald Reagan, Bernie Sanders, Project 2025, Elizabeth Warren, and everyone in between. Leading think tanks, such as the Center for American Progress, the Chamber of Commerce, and the American Enterprise Institute, all have endorsed ESOPs.¹

Not everyone thinks ESOPs are a good idea, however. The [Pension Rights Center](#) says that “it is extremely risky for ESOP participants to have too much of their overall retirement savings in any single stock, particularly employer stock...If a company with an ESOP is struggling financially and has to lay off workers, the plan must cash out those workers’ shares in the ESOP, which can create even more cash-flow problems and lead to more layoffs,

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1. Karla Walter, “[Building Workers’ Wealth in Cities and States](#)” (Center for American Progress, January 20, 2020); Alex Brill, “[S Is for Savings: the Pro-Growth Benefits of Employee Owned Corporations](#)” (testimony given to the House Committee on Small Business, April 22, 2016); Miranda Fraraccio, “[What Is an Employee-Owned Company, and What Are the Benefits of This Business Model?](#)” (US Chamber of Commerce, September 24, 2024).

creating a ‘death spiral’ that could ultimately sink the company—and the value of the employees’ ESOP accounts. If a company’s ESOP is invested in privately-traded stock, the risks listed above are even greater, because the value of the stock is not determined by the stock market but by a third party, who may or may not be unbiased.”

Some advisors caution their clients considering ESOPs that there is too much litigation risk, that the Department of Labor (DOL) and the private litigation trolls are too likely to initiate legal action. A very small number of observers have argued that taxpayers should not support ESOPs because they don’t benefit workers as much as claimed.²

To really understand whether ESOPs are too risky for companies, employees, or taxpayers, we need to look at the now-extensive research on each of these issues. We can think of data as simply a way to bring all the stories and anecdotes together into a coherent way to look at how ESOPs are doing. As this paper shows, while ESOPs are not without some risks, the story of their success for workers, companies, and society suggests that this is one of the most effective economic policies the government has created. The real risk with ESOPs is that there are not enough of them. They are one of the few policy measures that have effectively and directly addressed the growing problem of wealth inequality and security in the US while at the same time helping companies grow, imposing minimal costs on taxpayers, and garnering the almost universal support of political leaders.

Critics have raised four primary risks about ESOPs:

1. They are too undiversified and impose retirement plan risk on participants.
2. They are too risky for sellers to ESOPs, either because sellers may not ultimately get fully paid for the stock and/or because sellers may forfeit

potential higher sale prices that could be offered by other buyers.

3. The debt used by ESOPs puts the company at excessive risk of failure.
4. They impose too great a risk of litigation for ESOP companies and sellers to ESOPs.

This paper looks at each of these risks based on the now-extensive research that is available on all of these issues. The data show that:

1. ESOP plan participants fare far better than comparable employees in comparable companies in terms of retirement security, both because they accumulate far more in their retirement plans and because they are much less prone to layoffs and turnover.
2. While sellers could get a higher after-tax return in about 15% to 25% of ESOP sales, their risk of not being paid is close to zero. The default rate on ESOP leveraged transactions is close to zero.
3. While ESOP firms do fail, they do so at a far lower rate than non-ESOP companies.
4. While litigation risk is a legitimate concern, only an average of about 17 cases per year make it to court (some should clearly be in court, and others are more questionable), and the settlements are generally under \$15,000 per participant.

This paper closes with a brief look at taxpayer risk—the risk that the ESOP tax benefits are not worth it.

2. Sean M. Anderson, [“Risky Retirement Business: How ESOPs Harm the Workers They Are Supposed to Help.”](#) Illinois Public Law Research Paper No. 08-19, March 19, 2009; Loyola University Chicago Law Journal 41 (2009).

A large, three-dimensional gold dollar sign stands prominently on the peak of a dark, craggy rock formation. A thin, golden tightrope extends from the base of the dollar sign across a deep chasm to a smaller rock peak on the right. A small figure of a person in a business suit stands on this second peak, looking towards the dollar sign. The background is a cloudy sky. A solid blue horizontal band is superimposed over the middle of the image, containing the title text.

1

How ESOPs Work

1. HOW ESOPS WORK

ESOPs are used by over 6,500 companies to share ownership with employees. The vast majority of these plans are funded entirely by the employer. According to DOL regulations proposed in late 2024 but withdrawn in early 2025, 77% of ESOPs in closely held companies also have a 401(k) plan, a number that is [very similar to the number of closely held companies with a 401\(k\) plan and no ESOP](#).

In publicly traded companies, which account for less than 10% of all ESOPs but 85% of ESOP participants, almost all ESOPs are combined with 401(k) plans.

In closely held companies, ESOPs are predominantly used as a business transition vehicle, and most of these companies either are or will become 100% owned by the ESOP. In publicly traded companies, ESOPs typically own 5% or less of the company stock. Whatever the use for an ESOP, all ESOPs must comply with rules for retirement plans under the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code.

ESOPs are a qualified employee benefit plan. “Qualified” means that in return for meeting certain rules, companies and employees receive favorable tax treatment. ESOPs are used to acquire stock in the company to be held in a trust for employees. At least all employees who work for 1,000 or more hours in a plan year must be included in the plan, receive allocations of benefits under the plan based on relative pay or a more level formula, vest in their benefits over not more than six years, and receive a distribution of their account balances after they leave the company. Stock is held in a trust governed by a trustee, who is charged with operating the plan for the “exclusive benefit” of participants. ESOPs are most frequently used in closely held companies as a means of business transition. Congress has provided significant tax incentives for companies and their owners to do this. ESOPs can be funded by contributions of shares from the company, company cash contributions to the ESOP trust to purchase shares, or a loan to the trust to purchase

shares that is repaid by the company. Employees rarely pay for these shares. Instead, the company pays, with the financing coming from the company’s future profits. Employees have the right to sell any distributed shares back to the company at an appraised fair market value. For further details on how an ESOP works, see our article [How an Employee Stock Ownership Plan \(ESOP\) Works](#).

ESOPs have been around since the 1950s, but only a few hundred were set up by the early 1970s because each one had to be approved separately by the IRS. ESOPs were not designed specifically as a retirement plan, but they had some similarities. They held benefits in trust for employees until they left the company, and employers could deduct contributions to the plan. Promoters of ESOPs saw a chance to fit them into the bill that would become ERISA and give them a specific legal standing that would make it much easier to get them started. In return, however, ESOPs would be subject to most of the same rules as other retirement plans for things like eligibility, vesting, and distributing benefits.

In 1974, Congress was reforming retirement plan law. Retirement plans got started in the late 19th century, but they did not become popular until World War II, as companies and unions sought to provide better benefits for employees. Most plans were traditional pension arrangements, providing for lifetime income after retirement. Employers could deduct the cost of these plans, but there were no standard rules for who was covered, how much they would get, when they would get it, and what other rights they had. Following some spectacular pension failures, particularly at the car maker Studebaker, Congress started to look into how to make sure employees were properly protected. In 1974, Congress passed ERISA, which governs all sorts of benefit plans, including ESOPs.

The law sets out a framework for ESOPs, but leaves enforcement, regulatory detail, and oversight to the IRS and the DOL. The IRS is responsible for determining whether the plan rules are compliant

with the law and whether a company is taking improper advantage of the tax incentives Congress has provided for ESOPs. The DOL is responsible for making sure plans operate in compliance with all the rules for ESOPs, such as distributing shares when required to do so, following proper governance requirements, allocating shares in a timely manner, and investing non-stock plan assets prudently. The most important area of oversight, however, is valuation. Under the law, the trustee of a private company ESOP is required to have the shares appraised at least annually by an independent, outside appraiser. This includes when their ESOP purchases shares from a non-ESOP owner as well as from plan participants.

Valuation of closely held companies is necessarily part art and part science. Appraisers typically look at projected future earnings, earnings history, asset value, debt, sales of similar companies, public company data, and the rate of return investors require for investments of similar risk to come up with an assessment of value. Issues of control, liquidity, and the requirement for ESOP companies to buy back stock from former participants also factor in. There are a lot of judgment calls about what valuation methods to use and how different methods should be.

Plan participants can sue the trustee and anyone else deemed to be a fiduciary for the plan (one making decisions or causing others to make them) for paying the wrong amount for the stock. The DOL can also initiate or join litigation.

The DOL enforces the rules in two other ways. All retirement plans are subject to a random audit—a company is just picked by chance to make sure it is following the required rules. There are about 400 of these for ESOPs each year. In addition, the DOL will launch an investigation if it has reason to believe (often from a complaint from a participant or a news story) that abuses are occurring.

A large, three-dimensional golden dollar sign stands prominently on a dark, jagged rock formation. In the background, a person in a dark suit is seen walking a thin, golden tightrope that stretches across a deep chasm between two rocky cliffs. The sky is filled with soft, white clouds. A solid blue horizontal band is superimposed over the middle of the image, containing the text.

2

Risks for Employees

2. RISKS FOR EMPLOYEES

A consistent criticism of ESOPs is that they are undiversified. If an ESOP company does poorly, employees not only lose a retirement benefit but may lose their jobs as well. While some ESOP companies have failed, and some companies substitute the ESOP for an existing company-funded diversified retirement plan, [research](#) (much of it done by the NCEO's Nancy Wiefek, PhD, and Liza Shifrin, PhD) shows that ESOPs overall have been very good for employee wealth-building, wages, and retirement security.

ESOPs and Retirement Security

While there are some great retirement plans offered by companies, the overall data show that participation in retirement plans leaves out almost half the workforce, and the benefits are skewed towards more highly paid people. Only 53% of private sector employees participate in any kind of retirement plan, and only 25% of employees paid in the lowest quartile of wages participate. Most ESOPs have 100 or fewer employees. Looking at the private sector in general, in companies with 50 to 99 employees, 50% of workers participate in a plan, and at smaller employers, just 37% participate.³

Most retirement plans today, especially in the kinds of companies that typically set up ESOPs, are 401(k) plans. Sixty-eight percent of all 401(k) plans require employees to contribute their own money, and some employees don't contribute at all. The lower the wage, the lower the participation rate. Moreover, higher-paid people tend to defer a higher percentage of their pay, netting a higher percentage match from the employer, something ESOPs cannot do. One recent study found that 44% of company dollars in 401(k) plans go to the top 20% of earners. The study noted that "[t]he top 20% of earners (Income Quintile 5) receives an 11% larger share of employer contributions than income, while

those in the bottom pay quintile (Income Quintile 1) receive a 29% smaller share of matching dollars than income."⁴ Just over half of all employees work for an employer that contributes 50 cents on each dollar deferred or less, usually up to a maximum. So, if you put in \$1,000, your employer might put in \$500. Nine percent of workers work for an employer with a larger maximum, but 38% work for an employer with no match at all—it's all your money. Overall, about two-thirds of the funds in 401(k) accounts come from employees.

The material that follows looks at key issues comparing how ESOP participants fare in terms of retirement security. For a comprehensive look at the retirement crisis in the US and how ESOP participants fare relative to those not in an ESOP, see [The Retirement Savings Crisis and the Role of ESOPs](#) on the NCEO's website.

Why ESOPs Are Different

In the vast majority of ESOPs, employees contribute nothing. Their accounts receive contributions based on relative pay, so everyone gets the same percentage of pay from the company contribution. If Mary makes \$100,000 and John makes \$50,000, Mary gets twice as much as John. Pay over a certain amount (\$350,000 per year in 2025) does not count. In 401(k) plans, lower-paid people would typically get a worse deal. If the company matches deferrals at 50% up to the first 6% deferred, and Mary defers \$5,000, she gets \$2,500 from the company. If John can only defer \$1,000 (because he is mostly living paycheck to paycheck, as most people in his income bracket are), he only gets \$500, or one-fifth of what Mary got. ESOPs thus tend to be much better plans for people who have a hard time contributing to 401(k) plans and are considerably less skewed in their allocation of benefits, thus providing some level of retirement security for the lowest-paid employees

3. Congressional Research Service, "[Worker Participation in Employer-Sponsored Pensions: Data in Brief and Recent Trends](#)" (September 18, 2024).

4. Fiona Grieg et al., [Are employers optimizing their 401\(k\) match?](#) (Vanguard, 2024).

who most often have no retirement assets at all in comparable companies.

Of course, diversification is a good thing—it means that if one investment fails, you still can do well with others. But ESOP participants are not as much at risk as it might seem at first glance. First, when participants get to age 55 and have 10 years in the plan, they can start to diversify their ESOP accounts. They can diversify up to 25% of the company stock in their accounts in the first five years after reaching that milestone and then up to a cumulative total of 50% in the sixth year. Many ESOPs also have some portion of their plan assets in investments other than company stock.

Another concern is that ESOP companies that have 401(k) plans may decide to reduce or eliminate funding for the 401(k) in favor of funding an ESOP. In 2018, the NCEO addressed whether companies reduce their 401(k) contributions after establishing their ESOP. We studied this question using Department of Labor Form 5500 data from 2010 through 2016, the most recent year with available data. Our analysis found that companies tend to slightly reduce their 401(k) contributions after setting up an ESOP, but that their contributions to the new ESOP more than outweigh this decrease.

In 2013, a total of 191 privately held companies established standalone ESOPs. Of these, 107 or 56% also reported contributing to a separate 401(k) plan in at least one year before the ESOP was established (2010–2013) and in at least one year after (2014–2016). Three other companies reported having a 401(k) before the ESOP, but not after; we conservatively treated these companies as contributing \$0 in 401(k) contributions post-ESOP. These 110 companies made up our sample.

We compared the average cash contribution per active participant from the employer to the 401(k) plan in the years before and including the ESOP's creation (2010–2013) and after the ESOP's creation (2014–2016). When a 401(k) plan filing was missing for a given year, we excluded that year from the average.

The median company's per-participant 401(k) contributions were essentially unchanged before and after the ESOP. Half of the companies in the sample increased their 401(k) contributions on aver-

age after the ESOP, while the other half decreased their 401(k) contributions. The median company increased its average 401(k) contributions in 2014–2016 by 1.5% over 2010–2013. In absolute dollar amounts, this translates to an average of \$19 more per participant per year. The inflation rate averaged 1.68% over this period, washing out the nominal increase to a very slight real decrease.

However, though decreases and increases in 401(k) contributions were about equally common, the decreases were of larger magnitude. The average employer 401(k) contribution among the companies in the study was \$535 lower per participant per year after the ESOP than before, and a nontrivial number of companies (15%) stopped 401(k) contributions altogether after the ESOP.

In the sampled companies, contributions to the ESOP vastly outweighed the slight decline in employer 401(k) contributions: on average, these companies contributed \$6,870 per active participant per year to their new ESOPs in 2014–2016, and the median company contributed \$4,879.

In our sample in this study, 56% of the companies had a 401(k) plan, but, as noted earlier, the DOL says that 77% of ESOP companies now offer a 401(k) plan, a somewhat higher percentage than comparable companies without an ESOP. In other words, an employee's chances of being offered a 401(k) plan are slightly better if the company has an ESOP than if it does not.

In 2020, the NCEO released [Measuring the Impact of Ownership Structure on Resiliency in Crisis](#), a comprehensive comparison of how workers fare in ESOP companies versus comparable non-ESOP companies that offer a 401(k) plan. This first-of-its-kind project drew on a comprehensive analysis of more than 300,000 plan filings, covering more than 43 million employees. Using data from the required Form 5500 retirement plan filings from the DOL, the study matched every S corporation ESOP (most ESOPs are in S corporations) with comparable S corporations with 401(k) plans. The study found that in 2019, the average ESOP account balance was \$132,362, while the average 401(k) balance in comparable non-ESOP companies was \$63,925. Table 1-1 looks at the numbers in more detail.

Table 1-1. ESOP vs. 401(k) plan account balances		
	ESOP	401(k)
Mean	\$132,362	\$63,918
10th percentile	\$9,776	\$4,268
25th percentile	\$23,057	\$13,958
50th percentile	\$71,449	\$38,853
75th percentile	\$151,064	\$80,070
90th percentile	\$296,253	\$155,221
Number of plans	2,861	307,413

A multivariate regression analysis (a statistical technique for isolating the independent effect of a variable—in this case, having an ESOP) that controls simultaneously for industry, geography, and size shows that being an ESOP is associated with \$67,616 more in retirement assets on average compared to a comparable traditional business.

These data look at total account balances, but it is also important to consider how much of that is employer money versus employee deferrals. The average employer contribution to an ESOP per participant was \$6,567. For 401(k) plans, it was only \$2,507 (n = 286,899). In ESOPs, 94% of the plan's assets came from the company; in 401(k) plans, only 31% came from the company.

These data look at ESOPs versus 401(k) plans, but the data showed that (similar to the DOL data) 80% of the ESOP companies had 401(k) plans with a mean account balance of \$75,246. In other words, a typical ESOP participant would have roughly three times the total retirement assets as a typical participant in a comparable company with a 401(k) plan and no ESOP. Table 1-2 summarizes these other findings.

Table 1-2. ESOPs typically provide more wealth for employees than 401(k) plans		
	ESOPs	401(k) plans
Mean average employer contribution	\$6,567	\$2,507
Percentage of plan assets contributed by employer	94%	31%
Mean 401(k) balance	\$75,246	\$63,918

One of the important things these data demonstrate is that ESOPs work better for lower-paid

employees. This is simply a function of the rules for ESOPs compared to 401(k) plans. In ESOPs, employer contributions must be allocated based on relative compensation or a more level formula. There is a cap on eligible compensation in all retirement plans that is adjusted upward each year. In 401(k) plans, employer contributions are typically based on how much the employee defers. Because higher-income employees tend to defer a higher percentage of their pay than lower-income employees, they not only get a larger absolute amount but a larger relative amount as well. Moreover, as we have seen earlier, many of the lowest-paid employees do not defer anything into the 401(k) plan and thus usually get nothing from the employer. That would not be the case in an ESOP.

In the past, some critics argued that ESOP companies must make up for this higher retirement contribution by providing lower wages or benefits. In 2018, NCEO Research Director Nancy Wiefek looked at data from the Census Bureau's National Longitudinal Survey and found that, in fact, ESOP participants have better benefits and compensation.⁵ The study looks only at younger workers (ages 28–34), but there is little reason to think the general direction of the data would be different for older workers. The study found that among the sampled workers, workers who are employee-owners have 92% higher median household wealth and 33% higher income from wages. Employee-owners are much more likely to have access to an array of benefits at work, including flexible work schedules, retirement plans, parental leave, and tuition reimbursement. For example, 23% of employee-owners have access to childcare benefits, compared to 5% of non-employee-owners.

In 2025, Wiefek [revisited the data](#), now updated so that participants were 36–42. She found that “Comparing currently employed respondents overall who have an ESOP to those who do not:

- Their median job tenure is 3 years longer than those without (8.5 vs. 5.5 years).

5. National Center for Employee Ownership, [Employee Ownership & Economic Well-Being](#) (2017).

- Their median income from wages is 23% higher (\$65,000 vs. \$53,000).
- Their median net household wealth is 45% higher (\$66,800 vs. \$46,000)."

Finally, there is a less obvious (but very important) factor. Wealth-building is hard to achieve without a job. The good news about ESOPs is that ESOP companies appear to lay people off far less often. A [2022 NCEO study](#) (PDF) of food industry workers by the NCEO found that workers in ESOP companies had a 2% annual involuntary separation rate compared to 5% in non-ESOP companies. A [2020 study](#) by researchers at Rutgers for the Employee Ownership Foundation found that ESOP companies were three to four times more likely to retain staff and much less likely to make pay cuts (26.9% vs. 57.3%). Data from the quadrennial General Social Survey going back to 2002 show that among em-

ployees at private firms, both [actual layoffs](#) and the [perceived likelihood of being laid off](#) are lower for employee-owners than for nonowners. The survey asks respondents whether they own any shares of stock in the company where they now work, either directly or through some type of retirement or stock plan; it does not separate out ESOPs, although ESOP participants would be the largest component of the respondents. These results are maintained when restricted to employees with more than one year of tenure, and when controlling for tenure, occupation, gender, race, age, and education.

In short, the evidence that ESOPs are good for workers is compelling. While there are examples of companies where this is not the case, the overall data show that working for an ESOP provides the vast majority of participants with greater job security, higher compensation, and substantially higher wealth-building.



3

Economic Risks for Companies and Sellers



3. ECONOMIC RISKS FOR COMPANIES AND SELLERS

ESOP companies can provide these benefits to employees only if they have strong economic performance. Not only do they need the additional money to provide the higher benefits and compensation that the data show they do, but they must also pay off the acquisition debt that these companies commonly use to acquire shares from the seller. There are now substantial data on the performance of ESOP companies that indicate that these companies tend to perform better post-ESOP than they would have been expected to perform if they did not have an ESOP. The data also show that the risk of ESOP companies going bankrupt is extremely small.

The first major study on this issue was “How Well Is Employee Ownership Working?,” published in the Harvard Business Review in 1987.¹ The study found that overall, ESOP companies had sales growth rates 3.4% per year higher and employment growth rates 3.8% per year higher in the post-ESOP period than would have been expected based on pre-ESOP performance. When the companies were divided into three groups based on how participatively managed they were, however, only the most participative companies showed a gain. These companies grew 8% to 11% per year faster than they would have been expected to grow, while the middle group did about the same, and the bottom group showed a decline in performance. In the 1980s, high-involvement management was not yet the norm in ESOP companies, and even less the norm in non-ESOP companies. Today, it is much more common in ESOPs, and most companies at least aspire to that management style.

The next study examined 300 privately held companies that set up ESOPs between 1988 and 1994, comparing each ESOP firm to a similar company of the same size and in the same industry without an ESOP.² It found that compared to matching firms

without ESOPs, ESOP companies have significantly higher sales growth and about 2.5% per year higher sales per worker than would have been expected otherwise. Like the study above, the researchers compared ESOP companies to comparable companies pre-ESOP and post-ESOP and calculated the difference as a way to index out industry effects or ESOP companies being better performers pre-ESOP.

In 2025, Fidan Ana Kurtulus of the University of Massachusetts and Eric Hoyt of the University of Rhode Island looked at a far larger sample of companies from the US Census’s Management and Organizational Practices Survey (MOPS), the largest management survey ever conducted of US manufacturing establishments. The researchers combined these data with data from the DOL Form 5500 filings, which indicate whether a company has an ESOP, when it was started, and the asset value in the plan, among other data. Data from the American Survey of Manufacturers (ASM) and the US Longitudinal Business Database provided detailed economic data about the firms. The various data sets could be matched to produce a picture of how ESOP and non-ESOP companies performed over the time period. The results are part of an ongoing project that will provide considerably more data over time, both from these surveys and from other Census business surveys. Because surveyed companies are required by law to respond, there are no sampling bias errors. There were approximately 44,000 businesses in the sample (the number varies somewhat from one survey question to another), 550 of which had an ESOP. Looking at data from 2010 to 2015, the authors found that the establishment of an ESOP increased productivity by 5.24% over the ensuing five years.³ As ESOP asset value grows,

1. Corey Rosen and Michael Quarrey, “[How Well is Employee Ownership Working?](#),” Harvard Business Review, September 1987.
2. Joseph Blasi, Douglas Kruse, and Dan Weltmann, “Firm Survival and Performance in Privately Held

ESOP Companies,” in *Sharing Ownership, Profits, and Decision-Making in the 21st Century*, ed. Douglas Kruse (UK: Emerald Group Publishing Limited, 2013), 109–24.

3. Fidan Ann Kurtulus, Eric Hoyt, et al., “Employee Share Ownership, Management Practices, and Firm Outcomes in U.S. Manufacturing,” presentation at

the effects increase. These increases can specifically be attributed to ESOPs. The authors controlled for management practices, line of business, size, and multiple other factors. Future research will look at the impact on employment. It could be, of course, that these effects are unique to manufacturing, but there is no obvious reason to think so, based on prior research that does not indicate industry is a factor.

Finally, we can look at the risk of default or bankruptcy. A 2014 analysis⁴ by the NCEO found that based on an analysis of 1,232 leveraged ESOP transactions at three large banks between 2009 and 2013 (two of which were recession years), 1.3% of ESOP companies in the sample defaulted on their loans in a way that imposed losses on their creditors for loans in effect between 2009 and 2013 (or an annual rate of 0.2%). The defaults accounted for 1.5% of the total value of the ESOP loan portfolio for these companies during this period. The bank data were available only for defaults imposing losses; the data presented here do not include defaults that resulted in loan restructuring where the loans were ultimately repaid or were being paid on the new schedule.

For sellers to ESOPs, these data should be comforting. Sales to ESOPs often involve seller notes. The data show that these loans are very likely to be repaid and impose minimal (although not zero) risk for sellers. Sellers need to weigh this very minimal risk against selling to another buyer. Another buyer may offer cash up front (albeit often with contingencies, such as earnouts, that may lower the price). ESOP sales, on the other hand, can provide better tax treatment for the seller and be better for their business legacy.

One emerging trend in ESOP finance may help alleviate this concern. There is a nascent secondary market for ESOP seller notes where sellers can sell their notes for 85% or more of the face value of the note. This would allow the sellers to limit or eliminate risk.

Rutgers Beyster Fellows Program, Palo Alto, June 24, 2025.

4. Corey Rosen and Loren Rodgers, "[Default Rates on Leveraged ESOPs, 2009–2013](#)" (July 2014).

The image is a composite. The top half features a large, three-dimensional golden dollar sign (\$). The bottom half shows a person in a business suit standing on a narrow, rocky ledge, balancing a tightrope that stretches across a deep chasm. The background is a cloudy sky. A solid blue horizontal band separates the top image from the bottom image, serving as a background for the page number and title.

4

Litigation and Regulatory Risk

4. LITIGATION AND REGULATORY RISK

Many people in the ESOP community have been concerned that the DOL has taken an excessively aggressive stance against ESOPs, particularly in investigations and litigation concerning whether the ESOP overpaid for shares in the initial transaction. On the other hand, although [abusive ESOP transactions](#) are outliers, their existence suggests the need for both industry self-monitoring and a role for the DOL and the IRS. The DOL has been much less active on issues with ongoing ESOPs other than administrative errors. The private litigation bar (mostly three firms) has continued to initiate five to ten ESOP lawsuits per year. In recent years, however, both the number of investigations and the number of lawsuits initiated by the DOL have declined significantly, as described in our book [ESOP and 401\(k\) Plan Employer Stock Litigation Review 1990–2025](#).

Recently (2024) proposed and withdrawn DOL [valuation regulations](#) could have created some significant problems for ESOP transactions. The DOL stance on ESOPs is likely to change significantly, however. Daniel Aronowitz, who was recently confirmed to head the DOL's Employee Benefit Security Administration (EBSA), promised to "end the war on ESOPs." At Aronowitz's [June 5, 2025, confirmation hearing](#) (the segment with Aronowitz starts at 35:30 in the video), Alaska Republican Senator Lisa Murkowski (who once worked for an ESOP company) noted that Aronowitz was "probably very familiar with the angst that has been expressed by some that ESOPs have been operating under a patchwork of litigation and there has been a need for a single clear regulatory definition of good-faith effort of valuation of ESOP stock."

Aronowitz replied, "I believe that Congress wants ESOPs, and everybody is for ESOPs except for the DOL for the last 20 years. I will end the war on ESOPs. I think it's the best way for employees to get an additional benefit and ownership in an American company. The valuation companies have all been sued by the DOL. . . . it can't be right that every single one of them is doing it wrong. What

the Department is doing is nitpicking the professional judgment of the valuation professionals. I'm going to put an end to that. Because I think unless there is a clear conflict of interest, then the valuation is appropriate when done by an independent valuation firm."

More broadly, Aronowitz said EBSA will "end the practice of open-ended investigations that go on for years. We will end the bias against ESOPs and other legitimate ways to expand retirement benefits and ownership to America's workers. And we will end the regulatory abuse of common-interest agreements with plaintiff lawyers. EBSA's enforcement will be fair, even-handed, and efficient. . . . We will restore discretion to plan fiduciaries as Congress intended in the ERISA statute so that fiduciaries, not the government or plaintiff lawyers, decide what is best for plan participants."

At the same time, the new secretary of labor, Lori Chavez-DeRemer, has also been a strong ESOP advocate and told a conference of the ESOP Association, a trade group, that "I want you to know that the Trump administration recognizes the real transformative power of employee stock ownership plans. We're here to undo the culture of harassment that has hurt the growth of ESOPs."

Regulatory Issues

The DOL can act on perceived ESOP abuses or errors both through litigation and through audits and investigations. The DOL has long stated that ESOPs are subject to heightened audit and investigative attention relative to other benefit plans. DOL activity in this area, however, has declined significantly in recent years.

In 2017, we at the NCEO did a comprehensive analysis for the prior 10 years of what the DOL looks at when doing these investigations.⁵ About half

5. National Center for Employee Ownership, "[Data on EBSA's Civil ESOP Investigations, FY 2007–2017](#)" (2019).

the cases for which we had data were related to whether the ESOP paid too much to buy stock from an owner outside the ESOP. The rest had to do with a variety of procedural issues, such as not making distributions on time or not including people who should have been eligible. Most of the settlements are small, under \$100,000. The 25 largest settlements, such as the \$250 million agreement with Tribune Media (owner of the *Chicago Tribune* and other newspapers, which had a brief and notably unsuccessful ESOP), accounted for over half the total of all settlement amounts. When a case is settled, the money typically goes back into the trust and accounts for employees; if employees have already left the firm, they can get payments.

ESOPs in the Courts

The DOL has never issued final regulations on how to value ESOP shares, although, as noted, it issued proposed regulations in late 2024 that were withdrawn by the Trump administration as part of its withdrawal of all pending regulations issued by the Biden administration. The proposed regulations were pursuant to a requirement in the 2022 Work Act that the DOL issue regulations on valuation. The new Secretary of Labor and the head of the DOL's EBSA, which handles ESOP regulation and oversight, have both said that they will pursue a more ESOP-friendly approach than has been the case in the past. The DOL's latest regulatory agenda indicates that new valuations may come as soon as January 2026.

The lack of regulatory guidance on valuations has left the issue to courts to make decisions. These cases end up largely being battles between dueling experts, and the resultant decisions do not provide clear and consistent guidance on how to proceed on valuation issues. The NCEO's [ESOP and 401\(k\) Plan Employer Stock Litigation Review 1990-2025](#) describes and categorizes lawsuits from 1990 on. Over the 35-year period the review covers, 111 cases concerning valuation have made it to court. Another 356 cases concerned other issues, most often concerning plan operations, such as plan asset management, distribution rule changes, insurance coverage, and arbitration clauses. That works out

to about 13.5 cases reaching courts per year out of about (currently) 6,500 plans. The large majority are settled, meaning there is limited definitive guidance from courts on valuation. There is a perception that the DOL initiates a lot of valuation lawsuits each year, but from 2000 through 2024, only an average of about two per year were initiated by the DOL.

By contrast, there has been some increase in the number of cases initiated by a small handful of litigation firms looking to file class actions in ESOP cases. Very often, the firms look through ESOP Form 5500 filings to identify companies where plan asset value has dropped significantly. They then seek plan participants to try to initiate litigation, often in pursuit of a settlement. Very few of these cases reach a decision; companies often end up settling for what their insurance will cover, although usually after an effort has been made in courts to get charges dismissed at an early stage. The allegations most often focus on the ESOP paying too much in the initial transaction based on a subsequent drop in value. That drop can happen for a variety of reasons, such as the debt taken on by the ESOP to finance the deal (courts have dismissed these cases because that is just the nature of a leveraged transaction and does not take anything away from plan participants), forecasts being too optimistic, disputes over whether the ESOP paid for control rights it did not have, warrants used in the transaction, or valuation assumptions. While these are the most common issues, some cases concern plan operations (such as how cash in the plan is invested or changes in distribution rules), the sale of an ESOP company, or mismanagement (such as a case where the company never even told participants there was an ESOP). Some of these cases address genuinely bad practices or self-dealing; others present more questionable arguments.

There is a lot of understandable concern about just how much it has cost companies, trustees, and insurance companies to defend and pay settlements or judgments in ESOP cases. While it is impossible to account for all the costs, we can look at the total amount ordered or agreed to be paid. While the costs are painful for the parties involved, the data indicate that there are only a handful of decisions or

settlements against ESOPs each year and that the cost per participant is relatively low most of the time.

The NCEO performed an analysis that looked at all of the private company ESOP cases resulting in settlements or decisions mandating that money be paid.⁶ The total number of participants receiving a payout was not usually available. As a proxy for that number, we used the number of participants in the plan at or near the time the settlement or judgment was reached.

Note that some cases are decided for the defendants (roughly 20% during the study period, depending on what is defined as decided for the defendant). These cases are not included here. We identified 78 cases where money had been paid out by the defendants. Fifty-nine cases appear in table 4-1. Wilmington Trust and the DOL agreed to settle 21 cases in a single agreement.⁷ Three of the cases had already received an interim court decision and are noted separately here. Some key trends in the 78 cases include:

6. There were many public company cases involving stock price declines in retirement plans; most concerned 401(k) plans, but some were about ESOPs. They present very different issues and are not examined here. These were common until several years ago, but there are very few of these lawsuits now due to changes in pleading standards for these cases.
7. In an unprecedented move, the DOL settled 21 cases (3 had been filed in court, one of which reached a preliminary decision reported elsewhere here [the case involving Graphite Sales]; the other 18 were under investigation) in which Wilmington Trust acted as the trustee for ESOP transactions. The three lawsuits are *Scalia v. Wilmington Trust, N.A.*, No. 17-CV-1755 (N.D. Ohio) (the Graphite Sales ESOP), *Scalia v. Wilmington Trust, N.A.*, No. 17-CV-6325 (S.D.N.Y.) (the HCMC Legal, Inc., ESOP), and *Scalia v. Wilmington Trust, N.A.*, Civil Action No. 19-CV-2793 (S.D.N.Y.) (the Stargate Apparel, Inc., ESOP). This means that 18 cases not reported here did not make it to any court decision. Wilmington agreed to restore a total of \$80 million to the plans, which cover about 5,000 participants, with amounts varying by company. In addition, Wilmington agreed to pay \$8 million to the government and to reimburse plan sponsors an amount to be determined for legal costs and expenses advanced in connection with the DOL's investigations and litigation.

- Most cases were settled before a judgment was reached (all but four in the study period), with defendants not admitting to wrongdoing.
- All but 22 concerned the valuation of the shares in a transaction with a non-ESOP owner. The others dealt with mismanagement of plan or company assets, the sale of the company, fraud, or distribution rules.
- Twenty-one cases were settled in a single agreement with Wilmington Trust in 2020.
- Forty-two of the cases were brought by private parties, and 40 by the DOL (sometimes joining a private party).

The data show that from 2013 through 2024, a total of \$468.75 million was paid out in judgments and settlements. Of course, not all litigation results in a settlement, and the defense wins outright in some others, but defense costs can still be substantial. The average payout per employee in these cases was just under \$15,000 per participant.

One way to think about these costs is that the average annual total is about \$39 million, plus unreported litigation costs. Given that in any of these years, there have been about 6,200 private company ESOPs, this averages about \$6,300 per year per company (and perhaps as much as \$7,500 per year if we add unreported litigation costs). Of course, that is not how these amounts are paid, but it provides context to compare what companies and/or ESOP trustees pay per company in fiduciary insurance. That amount varies with the size of the company and policy limit, but would be a lower number, indicating that, overall, fiduciary insurance is in the black for insurers. These numbers, of course, are just averages, and any one very large payout may put a strain on an insurance carrier.

We can also look at the value of the judgment relative to the purchase price the ESOP paid. The settlement or decision cost averaged about 12.5% of the purchase price the ESOP paid in cases concerning the valuation of the shares at the time the ESOP bought them. This applies only to the valuation cases and does not include the 18 cases included in the Wilmington Trust settlement because those

numbers are not available. (The Willamette joint settlement applied to 21 cases, but 3 of these had already reached settlement agreements and are included in the table 4-1.)

Nineteen percent of the cases yielded settlements or judgments of 20% or more of the original

purchase price, the highest of these being one-third of the purchase price. Among the remaining cases, five yielded a payout of between 15% and 20% of the purchase price; ten between 10% and 15%; seven between 5% and 10%; and eleven less than 5%.

Company	Year	Issue	Purchase price	Award	Trustee	Approx. value of award per participant	Settlement (S) or judgment (J)
Orion Bank, <i>Smith v. Williams</i>	2013	Bankruptcy		\$175,000	Insiders	\$2,000	S
Robert Caputo, D.O., <i>Solis v. Robert S. Caputo, D.O., P.A.</i>	2013	Valuation and various plan improprieties		\$225,000	Insider	\$6,000	S
Alliance Holdings, <i>Chesemore v. Alliance Holdings, Inc.</i>	2013	Valuation and other fiduciary breaches, including self-dealing	\$38 million	\$11.4 million	Insiders	\$110,000	S
Parrot Cellular, <i>Solis v. Webb</i>	2013	Valuation	\$28 million	\$4.2 million	Insider	\$20,000	S
Sentry Services, <i>Gatto v. Sentry Services</i>	2014	Failure to tell participants there was an ESOP or to make distributions		\$11.7 million	Insiders	\$78,000	S
Sierra Aluminum, <i>Perez v. GreatBanc Trust Co.</i>	2014	Valuation	\$53 million	\$5.25 million	Independent	\$13,600	S
Houlihan Smith & Co., <i>Kaplan v. Houlihan Smith and Company</i>	2014	Sale of company after ESOP		\$1.275 million	Insider	\$13,000	S
W.M. Putnam Co., <i>Koerner v. Copenhaver</i>	2014	Valuation	\$3.4 million	\$650,000	Insider	\$6,000	S
AIT Laboratories, <i>Perez v. PBI Bank, Inc.</i>	2015	Valuation	\$40 million	\$7 million	Independent	\$55,000	S
Bruister and Associates, <i>Perez v. Bruister et al.</i>	2016	Valuation	\$19.4 million	\$6.5 million	Insider	\$5,000	J
Mona Vie, <i>Jessop v. Larsen</i>	2016	Valuation	\$186 million	\$19.4 million	Independent	\$49,500	S
Buckles-Smith Electric Co., <i>Schwartz v. Art Cook</i>	2017	Redemption of shares when the company had higher offers		\$350,000	Insiders	\$2,000	S

Table 4-1. ESOP settlement/judgment summary, 2013–2024

Company	Year	Issue	Purchase price	Award	Trustee	Approx. value of award per participant	Settlement (S) or judgment (J)
Fleet Card Fuels, <i>Carter v. San Pasqual Fiduciary Tr.</i>	2017	Management of the company caused the stock value to collapse		\$563,000	Independent	\$5,000 (very rough estimate)	S
Maran Corporation, <i>Perez v. First Bankers Tr. Servs., Inc.</i>	2017	Valuation	\$71 million	\$6.64 million	Independent	\$75,400	S
SJP Enterprises, <i>Acosta v. First Bankers Trust Services Inc.</i>	2017	Valuation	\$16 million	\$8 million	Independent	\$42,500	S
Rembar, <i>Acosta v. First Bankers Trust Services Inc.</i>	2017	Valuation	\$15.7 million	\$1.1 million	Independent	\$25,000	S
Laser Skin Care Centers of New York, <i>Acosta v. Ginsberg</i>	2017	Valuation	\$24 million	\$5.5 million	Insider	\$60,000	J
Meeker Enterprises, <i>Brent v. Meeker</i>	2018	Insider self-dealing		\$170,000	Insiders	\$3,000	S
Piggly Wiggly Carolina, <i>Spires v. Schools</i>	2018	Insider self-dealing, failure to appoint an independent trustee, and poor business decisions		\$8.5 million (est.)	Insiders	\$5,800	S
<i>Acosta v. Cactus Feeders, Inc., et al.</i>	2018	Valuation	\$100 million	\$5.4 million	Independent	\$5,400	S
Tobacco Rag Processors, <i>Acosta v. Reliance Trust Co., Inc.</i>	2018	Valuation	\$104 million	\$4.5 million	Independent	\$18,750	S
Triple T Transport, <i>Acosta v. Potts</i>	2018	Valuation	\$17.46 million	\$465,000	Independent	\$4,650	S
Tennyson Electric, <i>Gough v. Tennyson</i>	2018	Valuation	\$7.4 million	\$1.75 million	Insider	\$29,000	J
Sonnax Industries, <i>Acosta v. First Bankers Tr. Servs., Inc.</i>	2018	Valuation	\$49 million	\$2.2 million	Independent	\$14,000	S
Constellis, <i>Brundle v. Wilmington Trust</i>	2019	Valuation	\$201.5 million	\$29.8 million	Independent	\$7,200	J
ISCO, <i>Swain v. Wilmington Trust N.A.</i>	2019	Valuation	\$98 million	\$5 million	Independent	\$12,000	S

Table 4-1. ESOP settlement/judgment summary, 2013–2024

Company	Year	Issue	Purchase price	Award	Trustee	Approx. value of award per participant	Settlement (S) or judgment (J)
<i>Wawa, Pfeifer v. Wawa, Inc. et al.</i>	2019	Distribution rules		\$1.2 million	Independent	\$940	S
<i>Sentry Equipment, Pizzella v. Vinoskey</i>	2019	Valuation	\$20.7 million	\$2.3 million	Independent	\$30,000	J
<i>Bradford Group, Nistra, et al. v. Reliance Trust Co.</i>	2020	Valuation	\$100 million	\$13.4 million	Independent	\$15,400	S
<i>Weddle Brothers Construction, Scalia v. Farmers National Bank of Danville and Weddle Bros. Construction Company</i>	2020	Redemption	\$50 million (approximate)	\$545,000	Independent	\$3,630	S
<i>Zander Group Holdings, Acosta v. Zander Group Holdings</i>	2020	Valuation	\$33.5 million	\$4.1 million	Independent	\$22,470	S
Joint settlement in 21 ESOP cases with Wilmington Trust	2020	Valuation		\$80 million	Independent	\$16,000	S
<i>Rainbow Disposal, Hurtado et al. v. Rainbow Disposal Co., Inc. Employee Stock Ownership Plan</i>	2020	Sale of company		\$7.9 million	Independent	\$36,000	S
<i>Round Table Pizza, Vespa v. Singler-Ernst, Inc.</i>	2020	Company management decisions		\$275,000	Independent	\$900	S
<i>TBM Consulting Group, TBM Consulting Grp., Inc. v. Lubbock Nat'l Bank</i>	2021	Valuation	\$10.5 million	\$2 million	Independent	\$13,330	S
<i>Sta-Home Healthcare, Blackwell v. Bankers Trust Co. of South Dakota</i>	2021	Valuation	\$75.5 million	\$5.5 million	Independent	\$5,500	S
<i>Contractors Register, Scalia v. Professional Fiduciary Services, LLC et al.</i>	2021	Valuation	\$26.7 million	\$750,000	Independent	\$2,000	S
<i>Starkey Labs, Beck v. Austin</i>	2021	Mismanagement		\$973,000 in two settlements	Insiders	\$1,000	S

Table 4-1. ESOP settlement/judgment summary, 2013–2024

Company	Year	Issue	Purchase price	Award	Trustee	Approx. value of award per participant	Settlement (S) or judgment (J)
Nation's Safe Drivers Corporation, <i>Fink v. Wilmington Trust</i>	2021	Valuation	\$342 million	\$5.5 million	Independent	\$18,700	S
Wawa, <i>Cunningham v. Wawa, Inc.</i>	2021	Distribution		\$26 million	Insiders	\$2,600	S
Adams & Associates, <i>Foster v. Adams & Assocs., Inc.</i>	2021	Fraud		\$3 million	Insiders	\$1,000	S
World Travel, <i>Ahrendsen, et al. v. Prudent Fiduciary Services, LLC, et al.</i>	2022	Valuation	\$200 million	\$8.7 million	Independent	\$16,000	S
Maine Oxy, <i>Glynn v. Maine Oxy</i>	2022	Valuation of repurchased shares		\$6.3 million	Independent	\$7,500	S
KPC Healthcare, <i>Gamino v. KPC Healthcare</i>	2022	Valuation	\$227 million	\$9 million (\$4 million for trustee; \$5 million for company individuals)	Independent	\$3,600	S
McKinney Communication Company, <i>Threadford, et al. v. Horizon Trust & Investment Management</i>	2022	Valuation	\$65.4 million	\$2.1 million	Independent	\$7,000	S
McBride & Sons, <i>Godfrey v. GreatBanc et al.</i>	2022	Reorganization		\$16 million	Independent	\$77,000	S
Raydon, <i>Woznicki v. Raydon Corp.</i>	2022	Valuation	\$60.5 million	\$2.4 million	Independent	\$14,000	S
Kurt Manufacturing, <i>Walsh v. Reliance Trust et al.</i>	2022	Valuation	\$39 million	\$9.4 million	Independent	\$17,000	S
People Care Holdings, <i>Perez v. Jacobson and Douglin et al. v. GreatBanc Trust</i>	2014, 2016	Valuation	\$104 million	\$14.7 million	Independent	\$3,275	S
Triad Manufacturing, <i>Smith v. GreatBanc Trust Company</i>	2023	Valuation	\$104 million	\$14.8 million	Independent	\$4,200	S

Table 4-1. ESOP settlement/judgment summary, 2013–2024							
Company	Year	Issue	Purchase price	Award	Trustee	Approx. value of award per participant	Settlement (S) or judgment (J)
RVR, Inc. <i>Walsh v. Reliance Trust Co., et al.</i>	2023	Valuation	\$105 million	\$22.5 million	Independent	\$11,000	S
Virginia Community Bank, <i>Moore v. Va. Cmty. Bankshares</i>	2023	Sale of company with an ESOP	\$58/share at sale of company	\$6 million	Independent	\$30,000	S
Electric Supply Inc., <i>Cothran v. Adams</i>	2024	Valuation at termination of plan	Not applicable; plaintiffs allege ESOP shares bought back for too low a price	\$3.3 million paid to ESOP at termination	Insider	\$2,400	S
Advanced Diagnostic, Inc., <i>Colon v. Johnson</i>	2024	Sale of ESOP company; warrants; self-dealing	\$215 million at sale of company	\$10 million	Independent	\$35,000	S
Westlake Services Company, <i>Nguyen v. Westlake Services Holding Company</i>	2024	Interim ESOP valuation; account segregation	Interim valuation reduced price 30%	\$1.25 million	Insider	\$6,700	S
Casino Queen, <i>Hensiek v. Bd. of Dirs. of Casino Queen Holding Co.</i>	2024	Valuation	\$170 million	\$7.1 million	Independent	\$18,000	S
Western Global, <i>David Burnett, et al., v. Prudent Fiduciary Services</i>	2024	Valuation	\$519 million	\$14.5 million	Independent	\$36,000	S
Symbria, <i>Placht v. Argent et al.</i>	2024	Valuation	\$66.5 million	\$5.9 million	Independent	\$6,500	S
Pride Mobility, <i>Tufano v. Pride Mobility</i>	2024	Investment of cash in ESOP	Not applicable	\$2.1 million	Insider	\$2,300	S
Total				\$468.75 million			

Assessing Risk

One way to look at these data is to conclude, as many ESOP advocates have, that there is more regulatory and litigation risk for ESOPs than they deserve, that special scrutiny by the DOL and ambiguity about valuation standards create more investigations and lawsuits than other retirement plans would have. On the other hand, the absolute level of risk is very small. It is extremely unlikely that any ESOP set up today

will face litigation or investigation if it works with qualified advisors and does not push the boundaries of what an ESOP is meant to do, such as providing an excessive amount of warrants to sellers or giving appraisers unrealistically optimistic forecasts. There are a number of reasons why an ESOP may not be a good choice for a company, but concerns about legal and regulatory risk should not deter good candidates from moving forward.



5

Taxpayer Risk



5. TAXPAYER RISK

Finally, what about taxpayers? Congress has provided ESOPs and sellers to ESOPs with significant tax benefits. While the total cost of these benefits is only about \$2 billion per year, far less than most other business tax breaks, it is still a significant investment. The data reported in this paper strongly show that providing these tax benefits is a very wise choice. For instance, ESOP companies appear to lay people off at a dramatically lower rate. That means that both states and the federal government save billions of dollars per year in unemployment insurance and unemployment-related tax costs. The greater retirement security ESOPs provide is accomplished not through redistribution or taxation, but rather

by a predistribution of the future wealth that the employees help create. The enhanced economic performance of ESOP companies strengthens the economy and local communities. The tax cost of ESOPs can be compared to the far larger cost, for instance, of the tax benefit for carried interest for private equity firms, which have a much more mixed record in terms of their impact on workers and communities, and help to concentrate wealth, not spread it. Arguably, the real taxpayer risk with ESOPs is not that there are too many but that there are far too few. Hence, additional incentives to make it easier to finance and set up ESOPs are a well-justified investment.

About the NCEO and the Author

We are the National Center for Employee Ownership (NCEO), a nonprofit organization that has been supporting the employee ownership community since 1981. Our mission is to help employee ownership thrive. We have thousands of members because we help people make smart decisions about employee ownership, with everything from reliable information on technical issues to inspiration to help companies reach the full potential of employee ownership.

We generate original [research](#), facilitate the exchange of best practices at our [live and online events](#), feature the best and most current writing by experts in our [publications](#), and help employee ownership companies build [ownership cultures](#) where employees think and act like owners.

Whether you are considering employee ownership, managing an existing plan, or advising clients, we can help. Our [members](#) have access to all of our online resources, and we are committed to providing extensive materials for anyone interested in learning more about employee ownership, from [business owners](#) to [ESOP participants](#) to journalists to stock plan administrators and other service providers. We welcome everyone to sign up for our twice-monthly [email bulletin](#) and to visit our [blog](#).

Our [staff](#) covers the nation from multiple locations in the U.S., and our [board](#) includes representatives from employee-owned companies and the professional advisors who serve them.

We are supported almost entirely through membership fees and our activities, but we do accept donations, which are tax-deductible (we are qualified as a 501(c)(3) nonprofit charitable organization).

Corey Rosen

Corey Rosen is the NCEO's founder and former executive director and now is its senior staff member. Corey has spoken on various subjects related to employee ownership all over the world with government, business, and union leaders, and he is regularly quoted in leading magazines and newspapers. He has appeared on national television and radio programs and also has authored four books on employee ownership, plus more than 100 articles for various business, academic, and professional publications. He has authored or coauthored several of the NCEO's practical and research publications. He holds a PhD in political science from Cornell University.

The National Center for Employee Ownership
510-208-1300
customerservice@nceo.org
www.nceo.org

