

Employee Stock Ownership Plans

While there are many benefits of implementing an employee stock ownership plan (ESOP) for companies, their owners and employees, these transactions have many complexities and points for consideration, often requiring proficiency in multiple areas of law. Our talented ESOP attorneys walk clients through every step of the ESOP cycle, from feasibility studies to plan termination.

Owners of privately-held organizations, including those that have an ESOP, face many challenges:

- Aligning employees' goals with those of the company and its shareholders.
- Selecting a business exit strategy.
- Financing growth using a tax-favored strategy.
- Complying with Internal Revenue Code (Code) and Employee Retirement Income Security Act (ERISA) requirements applicable to ESOPs and other retirement plans.
- Understanding challenges related to the concentration of participant accounts.
- Exploring ESOP repurchase liability and Code Section 409(p) compliance.

When businesses consider implementing an ESOP, navigating an ESOP's complexities can be daunting. That is why it is crucial to partner with experienced attorneys. At Polsinelli, our knowledgeable attorneys counsel businesses of all sizes on implementing, sponsoring and/or terminating an ESOP, creating a market for shares of a privately held company or acquiring or disposing of an ESOP-owned company. When business owners work with Polsinelli attorneys, we consider the future of the business and its owners from every angle.

We guide clients, including companies, trustees, selling shareholders and lenders, through a broad array of ESOP processes and services, including:

- Conducting exploratory studies on whether an ESOP is right for an organization, including considerations of the employee population, tax goals and shareholder exit strategy.
- Suggesting alternative paths that offer employee ownership and incentivize company performance if an ESOP is not right for business.
- Drafting ESOP plan documents and transaction documents, including stock purchase agreements, loan agreements and any other ancillary documents required for ESOP transactions.
- Advising on corporate transaction structures and issues involving ESOP-owned companies, including compliance with fiduciary duties.
- Advising on organizational structure, corporate governance, corporate and ERISA fiduciary responsibilities.
- Drafting, reviewing and negotiating lending agreements and other credit documents pertaining to ESOP transactions.
- Counseling benefits committees and plan sponsors on fiduciary duties and ERISA requirements.
- Guiding selling shareholders through the Code Section 1042 process, allowing shareholders to potentially realize a tax-free sale to an ESOP
- Reviewing of and advising on Code Section 409(p) tests for S corporation ESOPs.
- Assisting with plan audits by the Internal Revenue Service (IRS) or U.S. Department of Labor (DOL).

- Assisting with RFPs and negotiating with ESOP service providers, including plan trustees, third-party administrators and record keepers.
- Representing plan sponsors, trustees or other fiduciaries in connection with litigation arising out of an ESOP transaction or ESOP sponsorship.

With substantial experience in ESOP-related transactions and post-closing ESOP matters, Polsinelli's ESOP attorneys are committed to guiding you through the complexities to reach a successful conclusion to your ESOP transaction and will be there to assist you following the closing of your ESOP transaction.

Matters

- Advise leading institutional ESOP trustees in multiple transactions involving creation of new ESOPs to purchase companies in a variety of industries including manufacturing, wholesaling, construction, engineering and others.
- Represent companies and founders in ESOP transactions, including structuring, financing and plan design.
- Advise ESOP companies and ESOP trustee in connection with sale of the company, whether 100% or partially ESOP owned.
- Represented company in connection with the sale of 30% of its shares to an ESOP for approximately \$380 million.
- Represented ESOP trustee in connection with the purchase of 30% of a company for approximately \$300 million.
- Represented company in connection with the sale of 100% of its stock to an ESOP whereby the company's 401(k) plan participants were able to invest in the purchase through a rollover of a portion of their 401(k) plan assets.
- Acted as special ESOP counsel to a North American security integrator in connection with its sale to a strategic investor for approximately \$275 million.
- Represented electrical company in connection with the sale of 100% of its stock to an ESOP for approximately \$160 million.
- Represented an information technology services company owned by an ESOP in connection with the sale of 100% of its capital stock to a private equity firm for approximately \$50 million.
- Represented ESOP trustee in connection with the ESOP formation and subsequent sale of an ice cream cone and wafer manufacturer to a strategic purchaser, which was also an ESOP-owned company.
- Represented an ESOP company in connection with its sale to a private equity firm for approximately \$325 million.
- Served as ESOP subject matter expert in connection with the dismissal of a claim for equitable relief against the board of directors of an ESOP company and the shareholders that sold their stock to the ESOP.
- Represented numerous lenders in connection with various financing ESOP transactions.
- On-going advice to numerous ESOP companies, including some of the largest in the United States, regarding transactional structuring, plan design, operational issues, fiduciary responsibilities, corporate governance and executive compensation. Plans range in size from approximately \$5 million to over \$5 billion in value.
- Provide counsel on a regular and recurring basis to companies in connection with the structure, negotiation and documentation of corporate redemptions, tender offers and other stock purchases in combination with ESOP purchases of stock.
- Represent plan sponsors and fiduciaries with audits and investigations by government agencies, including the Internal Revenue Service and the Department of Labor.
- Represented ESOP-owned construction company in connection with \$100 million stock sale.
- Represented construction company in connection with the formation of a new ESOP and the purchase by the ESOP of over \$300 million of stock.

- Represent several of the largest engineering, construction and design firms in the United States in connection with the design, documentation and operation of their ESOP.
- Represented engineering firm in connection with the formation of a new ESOP, debt restructuring and the purchase of stock from approximately 50 shareholders.
- Represented fiduciary of an ESOP-owned company in connection with redemption of stock for notes and warrants.
- Represented publicly-traded pharmaceutical company in connection with establishment and operation of ESOP and purchase of \$106 million of preferred stock.
- Represented fiduciaries of ESOP in connection with \$82 million sale of stock to publicly-traded telecommunications company.
- Represented fiduciaries of ESOP in connection with \$25 million sale of stock to publicly-traded company.
- Represented privately-owned international security firm in connection with establishment of ESOP and purchase of stock from individual stockholders.
- Represented individual owners of several companies in connection with Section 1042 tax-deferred sales of stock to ESOPs.
- Represented fiduciaries of convenience-store chain ESOP in connection with \$300 million sale of stock.
- Represented several plan sponsors in connection with the ERISA and securities law aspects of using participant 401(k) elective deferrals to purchase company stock.
- Represented fiduciaries of ESOP in connection with sales of stock in initial public offering.
- Represented the trustee of a newly formed ESOP in connection with the purchase of stock from founders of a craft brewery.
- Serve as an expert witness in significant cases involving ESOPs.
- Successfully represented the owners of a business in the sale of the business to an ESOP in a transaction that allowed them to defer gain on their sale.
- Represented a lender with respect to the sale of a business to an ESOP.
- Acted as fiduciary committee member for a \$200 million+ defined benefit plan and \$400 million+ defined contribution plan.
- Representation of an ESOP company in the professional services industry in its acquisition of another professional services provider
- Representation of a company in the technology industry regarding its ESOP formation and purchase of company shares
- Representation of an ESOP trustee in sale of healthcare company to a private equity buyer

Publications

April 3, 2026

Federal Court Grants Summary Judgment in ESOP Releveraging Case, Rejecting Novel Dilution Theory

March 20, 2026

North Carolina Federal Court Lets ESOP Fiduciary Claims Proceed, Underscoring Active Oversight Duties

January 23, 2026

Trump Accounts – Jump-Starting the Next Generation

December 16, 2025

Court Dismisses ERISA Fee Suit Against Kellogg, Reinforcing Pleading Standards for Plan Sponsors

December 9, 2025

New Year, New Dependent Care FSA Limits: Don't Forget to Amend Your Plan!

September 12, 2025

Arbitration in ERISA Litigation: Supreme Court Declines Review as Circuit Split Persists

July 18, 2025

A Quick Look at Benefits and Executive Compensation Provisions in the One Big Beautiful Bill

June 20, 2025

Sixth Circuit Holds TPAs Do Not Get a Free Pass from ERISA's Fiduciary Duties

June 12, 2025

DOL Rescinds 2022 Guidance Concerning Cryptocurrency Investments in 401(k) Plans

March 21, 2025

ESOP Transactions and the Duty to Monitor Revisited

January 17, 2025

Department of Labor Proposes Rule on Valuing Stock for ESOP Stock Purchase and Sale Transactions