APRIL 6-9 2026 MILWAUKEE WISCONSIN

NCEO 2026 ANNUAL EMPLOYEE OWNERSHIP CONFERENCE

WHAT BOARD MEMBERS NEED TO KNOW ABOUT ESOPS

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CE Requirements

1. Engage in the session content for all 60 minutes.
2. Input the secret word in the post-session evaluation survey. The secret word will be revealed at the end speaker's presentation.
3. Submit the post-session evaluation survey.

CE certificates will be emailed to you immediately after completion of the post-session survey. If you have not automatically received it, please check your spam folder or contact your IT team. Some company firewalls will filter out the email entirely.

Contact eventhelp@nceo.org for further assistance

ESOP COMPANY "PLAYERS"

- ESOP Company Shareholders (C or S Corporations)
  - ESOT (ERISA Trust); Individuals; Other
  - Be aware of S corporation shareholder limitations
- ERISA Trustee (Internal or External)
  - Discretionary Trustee – External
- Directors (Internal or Independent External)
- Company Officers
- Employees (Beneficial Employee Owners)

ESOT TRUSTEE

- ERISA/ESOT Trustee (Internal or External)
  - For purposes of communication ESOT = ESOP
  - Anyone serving as Trustee has significant fiduciary responsibilities
    - Internal Trustee may not be aware of significant fiduciary duties
  - Discretionary Trustee (External); recommended to pass most fiduciary liability to an ESOP experienced independent third party
  - DOL considers if the ESOP has “control”
    - Control in “appearance” – typically over 50%
    - Control in “fact” – It depends on circumstances, duties more pronounced

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ESOT TRUSTEE

- ESOT Trustee – Fiduciary Responsibility
  - Exercise discretionary control over plan assets
- Exclusive Purpose Rule
  - Discharge duties solely in interests of plan participants
  - Cannot engage in self dealing adverse to interests of the Plan
- Prudent Man Rule
  - Conduct affairs with skill, prudence and diligence
- Adequate Consideration (AC) – pay or receive AC in purchase or sale of employer securities

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ESOT TRUSTEE

- ERISA/ESOP Trustee Most Common Duties
  - Manage the Plan (ESOP) Assets
  - Determine FMV (Adequate Consideration) of ESOP Stock
  - Vote ESOP Stock
  - Monitor and Appoint Directors
  - Oversees participant distributions
  - Make ESOP Loan Payments
  - Ensure compliance with laws, regulations and guidelines

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ESOP COMPANY DIRECTORS

- Directors – Internal and Independent External
  - Anyone may serve as a Director
  - If ESOP is in “control”, the DOL often requires independent Directors
  - Recent Court Case: Su v. Eric Bensen et el. (DOL litigated when ESOP was 100% Shareholder but the Board was NOT independent)
  - Adequate Consideration Regulation – issue of control considered in duties and in determining ESOP stock valuation

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ESOP COMPANY DIRECTORS

- Directors – Standard of Conduct
  - Duty of Loyalty – Best to avoid any and all conflicts of interest
  - Duty of Due Diligence – Be prudent in discharging responsibilities
  - Business Judgement Rule – Directors protected from personal liability for decisions they make in the best interests of the Company
    - Decision made in an informed bases, emphasis on process and documentation
    - Decision made in good faith
    - Acted in honest belief action was in the best interest of the Company

ESOP COMPANY DIRECTORS

- Directors - Major Duties
  - Grow shareholder value – long horizon perspective
    - Observation: grow value prudently, aware of risk/reward balance
  - Set strategic goals and business strategy
  - Succession planning (Officers, Board, Leadership Team Members)
  - Appoint Officers and Board Committees
  - Hold CEO/President and Leadership Team accountable
  - Direct and evaluate Trustee as appropriate

ESOP COMPANY DIRECTORS

- Directors - Major Duties (continued)
  - Appoint, amend or terminate the ESOP
  - Establish corporate standards and conduct
  - Determine retirement plan contributions, distributions, dividends
  - Determine and manage ESOP stock repurchase obligation
  - Understand the stock valuation – work with the Trustee
  - Evaluate and approve significant corporate transactions

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ESOP COMPANY DIRECTORS

- Directors - Common Committees
  - Compensation Committee
    - Typically, External Independent Directors, establish leadership team compensation
  - Nominating Committee
    - Recommend Board candidates to Trustee, Trustee approves
    - Often the Trustee wants the Company to identify Board candidates
  - Audit Committee
    - When Company required to have audited financials, work with CPA firm

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ESOP COMPANY DIRECTORS

- Directors - Frequent Desirable Attributes for Independents
  - “C” Suite Experience (ESOP helpful not mandatory)
  - No conflicts of interest
  - Cultural fit - Understand employee ownership & collaborative culture
  - Skills for “Long Term Vision” – Common attributes
    - Financial literacy
    - M&A experience
    - Industry leadership
    - Other skills identified by the Company

ESOP COMPANY OFFICERS

- Officers
  - Appointed by Directors (Board)
    - Common positions: President, CFO, Vice Presidents, Secretary
  - Tasked with managing the operations of the Company
    - Company managers and supervisors typically appointed by officers
  - Board often evaluates the CEO/President, who then evaluates the Company leadership team (other Officers, leaders, etc.)
    - One goal is to have the CEO/President build a responsive team

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ESOP COMPANY OBSERVATIONS

- Resources for current Directors and Candidates
  - Networking – Attendance at ESOP and Industry Conferences
    - Meet peer groups, become a student of best practices
  - Publications – NCEO
    - Executive and Director Compensation in ESOP Companies
    - ESOP Company Board Handbook
    - ESOP Committee Guide
  - Consider other publications – governance, tool kits, newsletters
  - Webcasts - Communications, workshops, round tables, etc.

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ESOP COMPANY OBSERVATIONS

QUESTIONS??

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