Ownership on the March: Recent Progress in Supporting Employee Ownership

June 14, 2023

Description

Congress has taken important steps in the last couple of years to support the growth of employee ownership in the US. Bipartisan legislation such as the Main Street Employee Ownership Act and the WORK Act have recently passed and hold great potential for helping more businesses to become employee-owned through ESOPs and worker-owned cooperatives.

In this conversation, speakers discuss the implications of recent legislation and what more needs to be done to help more workers become owners. It features a panel discussion with James Bonham (President, The ESOP Association), Ken Baker (CEO, NewAge Industries), Ike Brannon (President, Capitol Policy Analytics; Senior Fellow, Jack Kemp Foundation), Haydee Caldero (Senior Vice President / Finance & Strategy, Crêpes à Latte), and moderator Eleanor Mueller (Economics Reporter, Politico). For more information about this event — including video, audio, transcript, speaker bios, and additional resources — visit: https://www.aspeninstitute.org/videos/ownership-on-the-march-recent-progress-in-supporting-employee-ownership/

About

This discussion took place as part of the Employee Ownership Ideas Forum, co-hosted by the Aspen Institute Economic Opportunities Program and the Institute for the Study of Employee Ownership and Profit Sharing at Rutgers University. This two-day event brought together leading policymakers, practitioners, experts, and the media for a robust discussion on how we can grow employee ownership for the shared benefit of American workers and businesses. Learn more at as.pn/eoforum.

The Aspen Institute Economic Opportunities Program advances strategies, policies, and ideas to help low- and moderate-income people thrive in a changing economy. Learn more at [as.pn/eop](as.pn/eop).

The purpose of the Institute for the Study of Employee Ownership and Profit Sharing at Rutgers University is to study the various models that have emerged and will emerge of employee ownership shares and profit shares in the corporation and society of the United States and around the world. Learn more: https://smlr.rutgers.edu/faculty-research-engagement/institute-study-employee-ownership-and-profit-sharing

Speakers

James Bonham

President and CEO, The ESOP Association

From The ESOP Association's national headquarters in Washington, DC, James Bonham serves as President and CEO, leading The Association and its 18 state and regional chapters throughout the nation. Bonham also serves as President of the Employee Ownership Foundation, whose mission is to educate and expand employee ownership throughout the United States.Bonham is a recognized expert in public policy, government advocacy, and executive leadership. He brings more than 25 years of experience as a high level government official, advisor, and business leader with expertise in the fields of taxes, labor, financial services, manufacturing, healthcare, and government contracting.

Before joining The Association, Bonham was Chairman for nearly eight years of the highly regarded Public Policy and Government Relations practice at Manatt, Phelps, & Phillips, LLP, a nationally recognized law and business consulting firm. In this role, Bonham led teams of lawyers, policy experts, and advocates representing clients as diverse as New York Life, The Recording Academy (Grammy's), StarKist, and the American Land Title Association.During a decade of public service, Bonham held multiple senior staff positions, including Chief of Staff in the U.S. House of Representatives and the U.S. Senate, where he was frequently cited in the media as one of the 50 most influential aides of either political party. His passion for shared capitalism springs from a family commitment to employee ownership: His grandfather had a personal and professional relationship with James Cash (J.C.) Penney, based partly on a shared business philosophy. One of their beliefs was granting a form of ownership to employees in the small mercantile businesses they ran. Bonham is proud to carry on today his family tradition of expanding employee ownership.

Ken Baker

CEO of NewAge® Industries/AdvantaPure®

Ken is the CEO of NewAge Industries, a plastic, rubber, tubing, hose manufacturer and a RFID tag solutions provider located in Southampton, Pennsylvania and providing service to customers across the country and around the world. A family-owned business that originated in 1954. Ken Baker joined the business in 1985, as the second generation of his family to carry on its successes of the family business. Since coming on board, Ken has taken NewAge Industries to new heights. The NewAge industries' AdvantaPure division produces platinum-cured silicone tubing, single use systems and more with a mission to become the premiere company for high purity tubing and other fluid flowing products used in the Pharmaceutical, Biomedical, Biopharmaceutical, and Food and Beverages industries globally. Ken Baker has been recognized as a leader in business and NewAge Industries has been a finalist of "Top Small Company Workplace " 2 years running and the winner of the Warton Family Business of the year award. Committed to being a sustainable company, NewAge Industries has one of the largest solar arrays in Pennsylvania, being landfill free with an extensive recycling program. NewAge Industries was awarded the PennFuture Green Power award in 2011, being now a 100% renewable energy company. NewAge is a certified B Corporation.

In 2006, Ken established the company's Employee Stock Ownership Plan (ESOP), and its employees now own 100% of the company. Ken is a founding member and Chairman of the Pennsylvania Center for Employee Ownership (PCEO), an organization designed to raise awareness and increase the number of employee-owned companies in Pennsylvania. Ken is also a founding board member of the EOeX. Ken is committed to the success of ESOPs, and he spends time speaking about ESOPs to other CEOs at local and national events.

Ike Brannon

President of Capitol Policy Analytics; Senior Fellow at the Jack Kemp Foundation.

Ike Brannon is president of Capital Policy Analytics. He is a Washington, D.C.-based economist who writes frequently on public policy issues. Brannon is a senior fellow at the Jack Kemp Foundation. Brannon also leads the Savings and Retirement Foundation, the Sports Caucus and the Prosperity Caucus. Brannon previously worked as a senior fellow at the Cato Institute and the George W. Bush Institute. He also directed economic policy for the American Action Forum. Brannon spent nearly a decade in government, serving as the chief economist for the House Energy and Commerce Committee, chief economist for the Republican Policy Committee, senior adviser for tax policy at the U.S. Treasury, principal economic adviser for Sen. Orrin Hatch (R-Utah) on the Senate Finance Committee, chief economist for the Joint Economic Committee and senior economist for the Office of Management and Budget. Brannon was the chief economist for the 2008 presidential campaign of Sen. John McCain (R-Ariz.). Brannon was also an associate professor of economics at the University of Wisconsin, Oshkosh. He has a Ph.D. in economics from Indiana University and a B.A. in math, Spanish, and economics from Augustana College in Rock Island, Illinois.

Eleanor Mueller (moderator)

Economics Reporter, Politico

Eleanor is a reporter covering Congress for POLITICO’s economic policy teams. A graduate of the University of Maryland’s Philip Merrill School of Journalism and Department of Government & Politics, Eleanor first joined POLITICO as a digital producer and copy editor. Before that, she reported out of newsrooms across Washington, including those of WJLA, CNN, McClatchy and USA TODAY. As an undergrad, she covered local and university politics for independent student newspaperThe Diamondback, as well as state politics for nonprofit student news organization Capital News Service. Eleanor is originally from the Seattle area, where she got her start as a high school student reporting for The Kirkland Reporter.

Transcript

Joseph Blasi (00:00:00)

All right. It's my pleasure to introduce the next panel on Ownership On The March, Recent Progress In Supporting Employee Ownership. And we're going to begin with a speech by Jim Bonham. Jim doesn't need any introduction. He's the president and CEO of the ESOP Association and also the Employee Ownership Foundation. It's no exaggeration to say that Jim is the senior thought leader and policy leader of the Employee Ownership community in the United States, and he sits in a rare seat hearing from the thousands of companies who are actually doing this rather than just the sort of the pointy headed scholarly research and the in the sand practitioners. Jim sees and hears it all. And so Aspen and Rutgers are very pleased that he is going to tell us like it is for the next 15 minutes. Jim, thank you very much.

James Bonham (00:01:25)

Thank you, Joseph. All right, if anybody can't hear me in the back, immediately start waving your arms because I do have a tendency to wander a little bit from the podium and also to speak a little softly. So I first want to start by thanking Maureen Conway from Aspen for hosting this ideas form and for Aspen's interests and efforts to advance employee ownership. For those of you who work on the Hill or have worked on the Hill, you really understand when Aspen starts taking on initiative, what that means. So the fact that Aspen has taken such an interest is really tremendous, and I could not be more grateful. I also want to thank Adrian Eaton, the dean, and Joseph Blasi, the director of the Rutgers Institute, and on behalf of the Employee Ownership Foundation with whom we've partnered for decades now, most of that under Michael Keeling's leadership who's here with us today.

I thank you for your work, especially the body of research and all the data collection that's been amassed in that nearly three decades, over four decades, three decades. I also want to express my gratitude on behalf of our membership, for those of you here from the media, all the facilitators and the panelists, and of course the congressional staff who are coming in and visiting throughout the day. Now, as you all hear throughout the next couple of days, America has in front of it an opportunity to recalibrate the employment bargain between employers and the owners. And I believe indeed, I suspect everyone you hear from during this forum believes that many of the tensions, many of the difficulties, many of the core problems we face in our nation are firmly rooted in wealth and compensation inequality, and that employee ownership is not only an elegant solution to those problems, but an eminently achievable solution with a proven track record of results over the last five decades.

So I want to set the stage a little bit about what's been happening in Washington and state capitals across the country. Why are we here and why are we here right now? Why is this moment so important for employee ownership? We've heard our reference already to the silver tsunami. Now over the next 10 years, more than two and a half million baby boomer business owners will need to transition their privately held businesses to new stewardship when they retire. Many will be passed to the next generation of the family, many will be sold to or merged with a competitor, a strategic buyer. Many will simply cease to exist. The assets being sold off in liquidation sales and their jobs go away.

This will be the single largest transfer of wealth producing assets in history. $7.3 trillion of private businesses, according to the New York Times, just last week. Over 65% of these business owners have no current succession plan. Now, we talk about the boomers, but not far on the heels of the boomers are the Gen Xers, who already collectively own $6.8 trillion in privately held businesses. So this is not just a 10-year opportunity, it actually extends beyond that. Currently, the top 1% of American households hold as much wealth as the bottom 90% combined, and for that bottom 90%, the vast majority of the wealth that they hold is actually their home.

The engine for the wealth accumulation at that top 1% is ownership, and that's why we're here today to find ideas and pathways to create more ownership of wealth producing assets for average Americans. To find ways that this literal once in a generation opportunity to recalibrate the agreement between employees and an owner is not squandered or lost. All right. I want to start quickly. Joseph gave a brief introduction about who we are, who is the ESOP Association Employee Ownership Foundation? So I want to share a little bit about the organizations and companies and professional service providers that I speak for today. I have the honor, the privilege to serve as president and CEO of the ESOP Association, and I'm also the president of the Employee Ownership Foundation. Now, while related, these two organizations serve different parts of our mission. Combined, we will spend more than a hundred million dollars over the next 10 years advancing the cause of employee ownership.

The ESOP Association is the only comprehensive national trade Association for ESOP companies and the professionals who provide services to them. Our membership includes more than 2100 employee-owned companies, and that includes nearly every company in the nation that is majority owned by its employees through an employee stock ownership plan. Our membership also includes over a thousand professional service providers and firms who perform the work of establishing, administering, defending, advising, and serving as trustees for ESOPs. Plainly, we are the largest organization in the world advancing employee ownership. We represent over $1.3 trillion in value and the roughly 10.5 million ESOP plan participants in the country. To put that in perspective, as I often like to do, if you combined the entire US auto industry from the manufacturers, to the parts manufacturers, to the service providers and the dealerships, they represent 8.5 million employees, we're 2 million more.

It's an important point to understand how large and employee ownership actually is within our own economy. Every year our Association produces more than 160 live or virtual educational conferences that are attended by more than 15,000 people nationwide. And those events, on average, between 10 and 15% of all of our attendees are the business owners or senior managers at those businesses who are investigating the option of selling their business to their employees through an ESOP.

So both through our direct contact with business owners and through our professional members who are trying to make these deals happen, we are keenly aware and in tune with the obstacles to forming new ESOPs and to keeping existing ESOPs going. And while I always and genuinely join us, celebrating our friends and allies in the worker co-ops and the employee ownership trust space, there is no doubt as has already been stated, ESOPs remain as the single largest and most successful model of employee ownership at scale. We look forward to and we always want to work with and partner with these other forms of employee ownership, but as you might imagine, I tend to wear the hat for ESOPs and champion them the most.

The Employee Ownership Foundation is our affiliated 501C3 and is supported almost entirely through voluntary contributions made by our membership of the ESCOP Association. Since 1992, the foundation has been one of the largest funders of data collection, academic research and financial support for programs run by Rutgers and others in the employee ownership space. And the foundation now raises and spends over a million dollars a year in this space. So my role today is to discuss the legislative and regulatory initiatives that have been underway over the last roughly five years at the federal, state, and even local levels. And I'll add to that a growing international collaboration that we are stoking as well with partners in the UK, Canada, Japan, and throughout the EU.

It was great to see Graham Nuttall here, and if you don't know Graham certainly get to know him, he's an amazing individual, who will become, if not already known as a giant in the employee ownership space worldwide. There are numerous barriers or friction points to the growth of employee ownership that are being addressed in small and large ways, and I put them all in roughly five buckets. First bucket would be rules and regulation, or more appropriately stated, the lack of specific and reliable regulation on the most essential element to ownership, the assignment of valuation to the business asset to be bought or owned by an ESOP. It is our belief that this one area is the root of most obstacles to new ESOP formation and their ongoing operation. You simply cannot establish an ESOP or properly run one if you can assign a value to the business according to well-defined regulation that has taken into consideration the views and the wisdom of interested stakeholders to the process.

Second bucket would be capital finance. There is ready availability of finance to form new ESOPs or re-leverage existing ESOPs up to about 80 to 90% of the transaction. However, the inability to fully finance a business into an ESOP at reasonable fair market terms is a deal breaker for a huge number of otherwise willing business owners who had found an ESOP. The third is awareness and knowledge. Now, these are two very different things. Now, I am not one who believes that there is a lack of awareness of employee ownership or ESOPs in the marketplace. What I do believe is that when the conversation is initiated inside the corporate suite about potentially selling the business, the ESOP option is raised and then perhaps very superficially dismissed rapidly due to a lack of knowledge, mostly on the part of business advisors who the owner has been trusting for years and years and years as they've grown their business.

The fourth bucket would be incentives. Now, business owners need to be properly incentivized to go through the challenge and expense of forming an ESOP versus the ease and simplicity of selling to a strategic buyer or to a competitor. And the fifth would be sustainability. Managing the repurchase obligation for departing plan participants has become perhaps the single biggest reason for planned termination and the sale of an ESOP. So what are we doing about these five buckets? I want to talk about each one on its own, and the first is the area of rules and regulation. When ERISA was passed in 1974, Congress expected the Department of Labor to promulgate regulations to define a term called adequate consideration. And for those of you who are unfamiliar with adequate consideration, it basically boils down to this. Has the trustee that's responsible for protecting the interests of the employees who are beneficiaries of the plan provided a good faith, fair market analysis of the value that the employees are paying for the shares of that company? Has the trustee done his or her job in making sure they're not overpaying for the company?

Well, that's what ownership is in a nutshell, is having a willing buyer and a willing seller come together at a price. Now, in the late 1980s, the Department of Labor initiated but terminated and never issued these regulations. But then starting in 2008, the Department of Labor had in place a special investigation project aimed specifically at ESOPs. And since the initiation of that project, over two thirds of all existing ESOPs have come under investigation by the Department of Labor. Now, imagine if two thirds of the businesses in this country came under investigation by a federal government agency, what would happen with the Chamber of Commerce or what would happen with the NFIB and the human cry that you would hear? We have been trying to raise that as the attention level of that for years now. The massive chilling effect of this initiative has been compounded by the lack of clear regulatory guidance for business owners seeking to form an ESOP.

So this one-two punch makes it quick work for an advisor to dismiss the employee ownership option for an otherwise willing founder. And I can say, I can't tell you how many times I have had a business owner who really desires to sell to their employees, come to me and say, "I just can't do it because I don't want to have second guessing five years, seven years, 10 years down the road. We're trying to do everything we can to follow the rules as they are, but it's just too much. So I'm going to sell it to private equity."

Now, the Department of Labor, to their credit, will point to a series of lawsuit settlement agreements that they have struck with individual businesses that they feel are sufficient guidance. And we could not disagree more because those what they call process agreements were created with no stakeholder input. They are unique only to the facts of that one case. They were struck under duress, a threat of a lawsuit with the US Federal Government and they changed. In order for us to have a reasonable approach to forming ESOPs and to remove some of those barriers, we need to have clear regulatory guidance. Now, fortunately, last year in the Secure 2.0 Act, which was passed at the end of the Congress, Congress directed the Department of Labor to formally issue these regulations and the Department of Labor has committed in writing to us that they will do so with stakeholder input, with a formal notice of comment rulemaking.

And I'm also pleased to announce, I'm not sure that any of you stay up late at night watching the Department of Labor's website, but we do. I'm pleased to announce that just last evening, the Department of Labor published a notice that they have formally entered the pre-rulemaking phase and are undertaking stakeholder meetings on this rulemaking. This is a monumental moment for the ESOP community because getting these clear rules starts a cascade effect. I love seeing and hearing Heather talk about, "Well, we need to streamline the process. We need to make it easier to form ESOPs. We need to make it easier to administer them." That begins with clarity on how you value. Once you have that clarity, it becomes so much easier because right now what we have is layer upon layer upon layer of redundancy and cost informing an ESOP to be protected against the Department of Labor investigation.

So we're really thrilled that this is one of the main things that's going forward. Now, this is going to be a long process. We're thrilled that there's going to be stakeholder input and it's necessary. So this is one of those, please stay tuned in this space areas. I'm going to move on to finance. Creating a complete capital stack for ESOP formation has been an enduring issue for decades. So here's the scenario. In basic layman's terms, a business owner wants to sell their business, they entertain offers. The buyer usually arranges the finance.

For an ESOP, you have a sell team and a buy team, and the owner is working with the trustee to arrange the finance. In almost every transaction, the seller is required to finance part or even all of the deal. This is a deal killer for most sellers. When they make the decision to exit their business, most of them just want out. They want to sell their business, they want to go buy their boat, they want to travel the world. They don't want to be encumbered with, "Will the new management be able to run the business and will I get the rate of return that they have promised me by giving them a seller's note?"

This year, about a month ago, the EEIA, the Employee Equity Investment Act was introduced thanks to the tremendous efforts of a whole host of folks. It is a strongly bipartisan bill and the EEIA in combination with the Main Street Employee Ownership Act that was passed back in 2017, seeks to address some of these capital stack shortfalls. EEIA utilizes the existing SBIC program, creates employee ownership investment funds that can access government guarantees to finance up to 100% ESOP transactions. The ability for these funds to, on their own, seek out companies to purchase and be able to offer not only what they believe is a fair market price, but also have the financing to close the deal is a game changer. This piece of legislation could dramatically increase the number of ESOPs being formed.

Now, this is going to be another long road ahead, but we are committed to making sure that this legislation becomes law. The third area is this area of awareness and knowledge. Now, awareness is what it actually is, this creature called employee ownership. About four years ago, we had Frank Luntz, who is a brilliant communicator, come and talk to one of our national conferences about ESOPs. And one of the first things he said was, "What is an ESOP? I thought it was like a fairytale like ESOP's Tales." He goes, "Why are you guys not just calling this employee ownership? Why are you not the Employee Ownership Association?" Well, there is sort of this profound lack of awareness or lack of knowledge of, "What do you mean your company's owned by the employees? That doesn't compute for me." Because in the American lexicon, when we think about ownership, there's some rich guy or a rich family that owns the company that you work for, or it's a publicly traded company and a whole bunch of shareholders own it, but it's really sort of controlled by a smaller group of people.

But awareness that there is a model of business where the employees are the beneficiaries of the growth and equity of their own company needs to be increased. Now, knowledge is in the area of professionals who can navigate a founder, a potential founder through a transaction, and this is an area where we need to have some work. Now in the Work Act that was passed last year, we created the new employee ownership initiative within the Department of Labor, and this initiative is designed to start addressing both of these issues. This year, the first step is to actually create the office, create the initiative. And while that sounds simple, it's not the easiest thing to do because the first step is deciding where to house it. The Department of Labor is not a monolith. They have EBSA, the Employee Benefits Security Administration, which is the enforcement division.

They're the ones who conduct investigations. They're the ones that they prosecute, but there are lots of other offices. In fact, I think we're going to hear later today from the director of the OASP at the Department of Labor, which is designed to promote policy and to encourage retirement plans. Now, if you're going to have an initiative that promotes employee ownership, do you put it with the guys who are investigating all of the employee owners or do you put it with the guys who want to promote it? The placement of this office is critical, and that's what happens this year. Starting next year, Congress authorized the expenditure of $50 million of the course of five years in grants that the Department of Labor will award to states to run programs designed to raise awareness, to provide additional knowledge and training for professionals and for business owners, and indeed to actually provide funding for feasibility studies for the formation of new ESOPs.

So the second task, after getting the office located in the correct place, the second task will be to make sure that all 50 states are aware of this opportunity so that they will plan for it and they will make an application for this grant funding. Because my belief is that $50 million will not even come close to the demand that's going to be out there for it. This is already included in the Work Act, but again, we have a long road ahead. We have to seek appropriations. We need to make sure that it's properly administered and that it's located in the right place. Moving on to incentives. If there's any lesson about

ESOP formation that we've learned in the last 50 years, it is this, this is going to sound really simple. There is no employee ownership without the founding business owner selling to the employees.

ESOPs don't start on their own. They start because a business owner makes the decision to sell to their employees. The primary incentive of the US is the 1042 tax deferral for the selling shareholder. However, since the mid 1990s, the corporate form has been treated differently. Only C-corporations were eligible for the 1042 exemption. Now, thanks to the Work Act that was passed last year, S-corporations will begin to be eligible for this same tax benefit. It's a start, but as Senator Cardin said, we still need to harmonize the treatment of S-corporations and C-corporations. This is a very expensive proposition for those of you who understand CBO scoring. There are also states now looking to provide their own incentives using taxes, grants and other types of supports, and there'll be lots of people talking about what's going on in all the various states. And the final area is the area of sustainability.

And there's two main areas in sustainability for ESOPs that I want to highlight. And when I say sustainability, in order to grow employee ownership, you can't lose the existing employee-owned companies to sales. The single biggest driver of the termination for ESOP plans is the repurchase obligation. That you have a class of employees who have over time accumulated significant value in their ESOP account and the business finds itself in the position that it can't really afford the RPO without significantly re-leveraging itself or doing damage to the business or it's long-term plans. At the same time, they're getting massive offers coming in from private equity or other strategic buyers. So the simple solution is we'll just sell it. "We can still work here, we'll all get a payday, but the employees are no longer the owners."

There needs to be some greater flexibility on timelines for accounts in excess of a certain amount. There also needs to be a look at the diversification requirements that are applied to ESOP plans because what happens is that employees will reach a certain age and then they will immediately start diversifying their account even though they are widely diversified through their 401k.

The other couple of areas on sustainability I really want to just touch on very briefly is that we need to do something to address conversions from private business to employee owned that become constrained to some structural impediments. The one that is most easy to explain is in the government contracting space. We have thousands of women owned, minority owned, veteran owned businesses that would love to become ESOPs. Many of them have or are partial ESOPs, but they can only go to 49% because the moment they go to 50%, they lose all of their preferential status as a government contractor. So there needs to be some kind of a look through provision to apportion the ownership shares of the ESOP itself to the ownership of the company so that they can maintain their status. Now, I could go on with a number of other ideas, especially in the ESG space and others, but I see Joseph has given me the hook. So I will wrap things up there, and again, thank you. Thank you, Maureen, for having me. Thank you, Joseph, for having me.

Joseph Blasi (00:26:29)

I'd like to introduce the panel. First of all, Eleanor Mueller, who is an economics reporter from Politico. Her deep insights and experience are so welcome. Eleanor, thank you very much for taking over this panel. And the members of the panel, Ike Brannon, president of Capital Policy Analytics, a senior fellow at the Jack Kemp Foundation, former fellow at the Cato Institute and a longtime experienced hill staffer. Ike, thank you very much. Haydee Caldero, senior vice President finances strategy, Crepes a Latte, an ESOP company, and finally Ken Baker, CEO of NewAge Industries. With that, I will pass the baton to our wonderful moderator.

Eleanor Mueller (00:27:21)

All right. Well, thank you so much for having us. The moderator of the earlier discussion was actually my editor, so we're keeping it within the family today. My name is Eleanor Mueller. I cover congress for all of Politico's economic policy teams, that includes labor, and before that, I was actually a labor reporter. So I've written a lot about minimum wage unions, childcare, paid leave, a number of things, but I've admittedly not written about employee ownership. And so I'm excited to learn a little bit more about what we're talking about today. I'd love it if we could go around one more time and introduce ourselves and say what you hope to get out of this panel today. And Ike, we'll start with you.

Ike Brannon (00:28:03)

Great. Thanks. My name is Ike Brannon. So I'm at a consulting firm called Capital Policy Analytics, and I'm a senior fellow at the Jack Kemp Foundation. And once upon a time, I was a chief economist for the Senate Finance Committee. I worked for Orrin Hatch who was a big proponent of ESOPs, and we spent a lot of time thinking about how to make their lives easier. And as we pointed out, it's a very difficult environment for them to grow right now.

Haydee Caldero (00:28:35)

Hello, my name is Haydee. I'm a reformed investment banker or former investment banker, and I found my way to ESOPs. After working on Wall Street for a number of years and helping billionaires make more millions, I decided to take my skills and help the middle market, small businesses with raising capital, succession planning, governance and growth strategies. And along the way, while I loved working with the entrepreneurs who had founded their business and helping them empower themselves and grow the value of their business, I also saw so much about the impact that their businesses had on their employees and the contribution their employees were giving them to help grow. And I fell in love with the ESOP structure and I convinced a client to turn down a private equity offer. It wasn't just my convincing, they went through it and learned eyes wide open some of the limitations of selling to private equity.

I will give myself credit for getting evaluation in an ESOP that beat PE, and we converted Crepes a Latte to 100% ownership five years ago. What's Crepes a Latte? We are the market leader in experiential hospitality. We create amazing brand experiences for big companies like Pfizer and Amazon at major events like trade shows. We have about 33 full-time employees, 150 part-time employees, and we recently updated our plan to allow some of our part-time employees to be eligible for the plan, which we're excited about because there are brand ambassadors.

And I also have the welcome trophy to say that my ESOP advisors all tell me that we were probably one of the most COVID impacted companies that they worked with. So we lost 100% of revenue, not for a couple weeks, not for two months, but for about 14 to 16 months and then had to rebuild. And are now post COVID 30% bigger than we were in 2019 but still working through those challenges. And I'll be excited to talk about how employee ownership impacted us during COVID.

Ken Baker (00:30:53)

Hi, Ken Baker, CEO of NewAge Industries. I'm also the co-founder and board member of the EOX, and I'm also co-founder of the PACEO, the Pennsylvania Center for Employee Ownership. So I'm very much involved with the awareness portion of the industry. NewAge Industries, I'm part of the silver tsunami, I guess. I sold all the shares. I was the last Baker standing, bought out my brother, bought out my father in the '90s. And did the ESOP, not 100% rate from the get go, but did it over a period of time, which I think is one of the better ways of doing it if you start early.

I did 30% 16, 17 years ago, then 10%, 9%, still 51% of the company could do anything I wanted. And then in 2019, I sold the last 51%. So we're 100% employee owned sub subchapter S-corporation. We're a manufacturer of plastic tubing and hose and rubber tubing and hose and RFID tagging solutions. We were very much involved with the pandemic vaccine. We supplied Pfizer, Moderna and J&J with single use systems to make the vaccine. So it's been a wild ride.

Share price has just gone through the roof. And repurchase obligation is a big issue and we're very much involved with that. I had $31 million going out the door last year, but we still have 49 millionaires working at the company and 27 of that 49 are multimillionaires. And so we have about 285 employees, so we are creating a lot of wealth for our team members. So repurchase obligation is a big issue. And so I'm all ears about coming up with ideas. We've already done a re-leveraging of 30% of the shares and we could talk about that if you'd like.

Eleanor Mueller (00:33:21)

All right. Well, before we get into the regulatory aspects of this all, I want to dive a little bit more into the positive impact that being employee owned had on Haydee, your company and Ken, yours. And Haydee, we'll start with you.

Haydee Caldero (00:33:34)

Yeah. Well, being in the live events business, particularly major events, conferences that tend to have 20, 30,000 attendees, March 2020, we were faced with the fact that all of our events were canceled and then after two weeks we planned for six months thinking that Q4 2020, we'd be back. And then by June we knew nothing until there's a vaccine. We had to ask each employee to take a pay cut. As a leadership team, we spoke and basically we were committed. We were not going to furlough everybody even though there were people in the warehouse and in shipping that we would have no functional need for because there was no job to be done.

But we committed to keeping everybody on, to ask for pay cuts as well as reduction in hours. We did limited furloughs really more to give executive leadership time. And when I say like three to four week furloughs to give executive leadership some time on what to do with everybody, and then focused on a pivot where we launched a new product within 60 days of going home and we're able to achieve about 10% of revenue from that pivot, which I think is remarkable. If you think about launching a new segment, you'd be glad to get 10% in the first 24 months.

Every single person helped on the production line of our better together boxes, salespeople included, executive leadership included. Executive leadership took even larger pay cuts than our normal team members. And we shared all these actions transparently as well as in one-on-one meetings. So open communication and updates as to how the business was going, gave us the buy-in where at points in 2020 people could have gone on unemployment benefits and made more money. And we were concerned about that, of creating that type of culture. And we didn't have to have a concern. As long as someone was willing to come into the office and support us, we found something for them to do and they contributed to improving our product that we didn't know what we were doing when we launched it.

Another key statistic is we went back to the office in June 2020, late June 2020, all wearing masks, social distancing, and got really minimal kind of issues there. We were 100% vaccinated, our full-time team members in June 2021, also no pushback. And we had all of our part-timers who we onboarded also 100% vaccinated. This is required at most major conferences to enter. And so we had to make it a mandate. Once again, we lost a couple part-timers, but we were able to more than hire to offset and not have an issue. And I think 100% attribute to our culture of employee owners that make our company a place where people want to work and thus mandates like that aren't mandates. They're about supporting our ability to operate and do business.

Eleanor Mueller (00:36:48)

Thank you. And then Ken, you already spoke a little bit about the wealth benefits to employees at your company. Are there other positive impacts that being employee owned has had upon your operations?

Ken Baker (00:36:59)

Yeah, absolutely. Getting, I mentioned at the previous segment about continued process improvement, getting team members to actually really engage in improving the organization, improving the profitability of the organization. So I'll tell a story or two about that. There's going to be some people rolling their eyes in the audience who have heard this story before. So when I'm in the business, I do my MBWA managing by wandering around saying, "Good morning, how about those Phillies? They won last night. And happy birthday to somebody on the floor." We have a very large building, and so we have a lot of fork trucks bringing raw materials to the end of the production lines, taking finished goods back to the warehouse.

So I see one day one of the fork truck drivers laying a patch, you know what I mean, spinning the wheels of the fork truck, basically beating up the fork truck, beating up the wheels of the fork truck, putting marks on the floor, just not doing what you really should be doing with the fork truck. So I go up to him and I say, "Why is it that you are beating up your fork truck?" And he kind of goes like this. And I say, "Here's a better question. Why are you beating up Joe's Fork truck? Because he owns that fork truck too." And his head goes down. It's a different conversation. They own everything in the building. They own the scrap, they own that fork truck, they own all the maintenance that fork truck would have.

Second story. We had seven people retire last year, and walked away with tens of millions of dollars between them. One of the gentlemen was a customer service representative, didn't make a tremendous amount of money, but was with us for a long time and had early shares and was a good team member. We had a party with balloons and cake, and I gave a speech about everybody, and this one gentleman came up to me and said, "Ken, when I came to work at NewAge 18, 19 years ago, I thought I would have to work till age 65 based on numbers. I'm 60 years old and I'm retiring, and the ESOP was able to allow me to retire. Both of my parents are still alive, their local. I have a couple kids that live nearby and I have some grandkids. Basically this ESOP gave me five years to take care of my family."

So that's pretty cool. That's what this type of business model can do. It can change lives, and the money can be actually generational. If somebody walks away with three, $4 million, which we do have those team members that if they invested right, that money can actually be inherited down to the next generation and maybe even to the grandkids.

Eleanor Mueller (00:40:25)

Right. Well Ike, you do not work at an employee owned company, but I'd assume that there is an employee-owned company that motivated you to become involved in this space. What do you think of when you think of that?

Ike Brannon (00:40:34)

Thanks. So two things. So I'm from a small town in downstate Illinois outside of Peoria. And the bank where I've banked ever since I was little is the Morton Community Bank, which is an ESOP and it's actually the largest S-corp ESOP bank there is. And since I banked there when I was little, I was given $100 worth of stock in it at one time, and I gradually invested and we remained, my wife and I, we got married about 20 years ago, right soon after, before it converted to an S-corp ESOP. And so we've remained shareholders. And it's been the best thing financially that's ever happened to me. And by virtue of growing up in a small town, everybody knows each other. I've known the president most of my life and having a PhD, I'm occasionally doing things for them. And so the last time I was home, I met him for breakfast and he took me on a walk through the main headquarters. We now have 55 branches across central Illinois. It's a $4 billion bank. And he likes to introduce me to his millionaire tellers.

And one of the things you observe with ESOPs is that tenure goes up quite a bit. People are much less likely to quit. So I did my PhD in economics at Indiana University. One of my advisors was Ben Craig. And Ben Craig became a prominent labor economist because of a series of papers he did with John [inaudible 00:42:13] from Stanford on productivity and firm ownership. And so what Ben and John did is they got this data, unique data from all these lumber mills and facilities like that in the Pacific Northwest. And there was a wide variety of ownership structures. Some were owned by C companies, some were ordered owned by sole proprietors, and some were, if not ESOP, some were ESOPs. And then some were also owned by employees in a non-ESOP arrangement. And so the fundamental question they were trying to determine is, does how we arrange ownership affect productivity?

And the answer was unambiguous. It does quite a bit, that employee owned firms are significantly more productive. And it wasn't incredibly intuitive at the time in economics. So for instance, if you do a C-corporation and you allow people to own to buy shares, you give them shares, it's such a small proportion of the company, it doesn't really seem to matter a whole lot. Why? And again, you know, take your example. These people don't own all that much more of a share, why does it matter to them? But it does. It is a big deal. And one of the things that you have observed was spot on is that people stick around for a lot longer. And it turns out productivity goes up quite a bit when people stick around longer. And then the other thing that they found out, again, just apropo your story, is that the wear and tear of the equipment, depreciation seemed to be lower in employee owned firms. So these articles were published in the late '90s, but they're still pretty seminal in this area.

Eleanor Mueller (00:44:10)

All right. So we'll dig into regulations a little bit now. And Haydee, you were talking about the conversion process for Crepes a Latte. What was your experience with the regulatory space and what are some things that the government could do differently from your perspective?

Haydee Caldero (00:44:28)

So I like to balance for those who... Having gone through a number of transactions throughout my life, including venture capital and private equity, bank lending, mezzanine, the ESOP transaction in itself is not wholly that much more complicated than anything else. It does require more effort from the seller side, which to run the transaction, which given that many entrepreneurs, that's not their fundamental skillset. It takes longer than a PE transaction because they don't now how to set the tollgates to actually effectuate decisions that then get to the closing. Where you run into the complexity is in the running of the plan and synchronizing it with the business and the uniqueness of your business, your employee base and your growth plans. That is particularly planned design, where if you give a benefit, you can't take it away. The concept within ERISA is difficult to manage because you're trying to plans for something 20, 40 years down the road.

A lot of early ESOPs, we were lucky we did not make these mistakes, but we've made other mistakes, give away too much too early, right? That's like a really big concern. But knowing that you're making a decision today that could impact where the company is 20 years ago and really cause issues is really hard. So if you're talking about regulatory relief, some level of additional flexibility that still inherently protects workers, the wealth that they've been given through the stock, that's absolutely important. But layers in some flexibility for the company to know that the plan has to change over time. And if you can't change it in some ways, make it more restrictive in the future, you could be endangering the ESOP long term, and that's not good for the shareholders. Some other great ones would be, Jim was talking about the aid program, just certifications in general.

So the aid program is for disadvantaged businesses in the federal procurement system. But certifications in general really are very oriented to the person and not a group body. And as such, the forms that you fill out, all the things, the way people think about who owns what is not tailored to this concept of ESOPs and group ownership, I think that's fundamental. I personally think there could be set asides, particularly from large businesses. I have gone to... Our major clients are all Fortune 100 companies like Pfizer and Merck. And in the extent that I am speaking with procurement individuals, I bring up that we are 100% employee owned and it could fit into their ESG. And I think I've made an inroads with one of our clients that we are going to see where that goes. But these are things that employee owned companies management teams should be having those conversations within their respective Industries. Banks, I think, should be reporting on ESOP funding as a key requirement to their regulators. I think that could be another…

Once again, just like we spoke about advisors not really knowing, a lot of banks really don't know the ESOP space. So then of course what we have is we're concentrated with a couple banks, which is great for them, but not great for more ESOPs, right? Because they don't know how to underwrite ESOPs. So if we had to report on ESOPs, it would automatically start making people think, "Hey, we need to build the specialty." And the SBIC investment is great. And there's a whole list of things we could be changing and improving on and we just have to focus on a couple and get those done and move forward.

But there is definitely a lot of regulatory relief that is required to ensure that as more businesses enter ESOP space, the regulatory requirements can meet the needs of more companies and the diversity of those companies and most importantly, it's these smaller companies. So Crepes is a very small ESOP where 33 full-time employees when we started we were about 20, 21. Now we're a very profitable company that helps us pay for all the expense structure, but getting it to companies smaller than us is going to be key for growing the number of ESOPs. And then ideally those small companies get bigger over time, but if it's too hard to enter, if you're 1 million, 2 million in EBITDA, they generally guidance is two and a half to 3 million minimum, then we're automatically decreasing the pie of potential employee owner companies.

Eleanor Mueller (00:49:36)

Ken, anything you want to add about your experience with the regulations around conversion?

Ken Baker (00:49:41)

Well, I wanted to talk about a little bit of awareness and how the state government can help out, which is creating offices of the employee ownership within the state government within community and economic development. At PACEO, we're working on a bill on that. And there are certain Colorado, I think we had a discussion on that. All the states should have that type of office and actually fund different things. Could be feasibility studies, it could be financing, it could be all sorts of things. So I think that would really help out the industry.

I'm going to get on my high horse and talk about private equity once again. It's not an equal playing field. The tax liability of a subchapter S-corporation, when the employee gets the benefit, it's taxed at ordinary income. And so private equity should be taxed at ordinary income. And then they are not. And then if that went away, there would be a lot more ESOPs because in my view with all the conversations I have with selling shareholders, that is the competition, which is private equity. Not all private equity's bad. There are some good private equity firms, but the vast majority they're... Well, the previous panel talked about that. I forget the woman who talked about that. It was a great story that she told.

Eleanor Mueller (00:51:38)

Well, I think Ike, that's your cue. How can tax policy help support employee ownership?

Ike Brannon (00:51:46)

It's tricky these days in Congress as all of us are aware of getting bipartisan legislation passed. And especially I think the next two years when it's really difficult to conceive of us doing anything kind of on the tax front or the regulatory front in terms of major legislation. But I always take great admiration in my old boss, Senator Hatch, who was a big advocate of both ESOPs and S-corporations. And when I worked for him, one of the things he did early on in each new congress is he would meet with the AICPA and he started doing this in the '90s. And he would ask them to come up with 10 things he could do for S-corporations and ESOPs that would make their lives easier.

And so he had this list and he carried it with him. And when he would go into some kind of negotiation and he knew he had some kind of leverage to get something, he would kind of go along the list and whoever the economist or advisor, tax guy was sitting next to him, he'd have them ordered in terms of costliness or efficacy. And we'd say, "See if you can get number four and we'd settle for number seven." But really every Congress, he would get a couple of things that would make life a little bit better for ESOPs or S-corporations.

And in fact, the thing that Senator Hatch did, but this is even before I worked for him that was very effective, is... And our bank would not be an ESOP if it were not for this, as when you define ownership in an S-corporation, it's 100 people, but if you're related to one another, you count as one owner. And what Senator Hatch put in is that relationship goes for five generations. So if we were to have the same one great-grandparent, we would count as one family. So Morton, the town where our Morton Illinois group was founded by a sect that was an offshoot of the Mennonite faith, and these people were basically pushed out of Germany and all settled en masse in Morton.

And my grandmother was an infant at the time, and was one of those people. So it turns out we are all related to one another. And so, our 100 shareholders goes up to, I think we have five or 600 different people who actually own stock. So we heard the previous one. There's some really important things that are kind of big that need to be done to help ESOPs and absolutely we should be pushing for this, but we should always keep in mind, look, take what we can get, a half a loaf is better than no loaf. And just thinking about what we can do just to push the ball down the road a little bit is, I think always and especially in this situation, the best strategy for advancing the cause of ESOPs.

Eleanor Mueller (00:55:02)

All right, well, I mean like you said, the next two years in Congress are complicated times you won't accomplish anything, but this obviously is an issue that has some bipartisan buy-in. And so what's the half of the loaf on the table now, to use your phrasing?

Ike Brannon (00:55:18)

I'm not sure that anyone's really thinking hard about this in any of the committees that have jurisdiction. So what I follow most closely, because I have some experience there, House Financial Services, the banking committee and the Senate Finance Committee. And the Senate Finance Committee, which has of course jurisdiction over taxes, is trying to figure out what to do about the tax cut and jobs act, many of whose provisions are expiring. And so to me, they might be able to do something about that in the next, by the end of 2024. But I suspect that there will be a big fight in 2025 when that expires and our individual tax rates go up, that both sides are not going to want to have all those tax rates go up. And so I think, I'm not sure what it is that's out there that we can grab for ESOPs, but I kind of think that this is the vehicle that we need to be thinking about attaching stuff to right now.

And so thinking about how you can inform the finance committee in ways and means, committee staffers about the hindrances to ESOPs and their benefits is the way to go. By the way, one of the things I do besides my consulting firm, [inaudible 00:56:39], I run this thing with a couple of my friends. It's called the Savings and Retirement Foundation. And 95% of what it is a seminar for people with PhDs in economics who like to think about issues related to savings and retirement issues. And so we have a lot of participants from the Treasury, from IRS, Social Security, EBSA.

And so if you are the type of person who likes to follow research related to this, and we do have people on occasion talk about ESOPs, let me know and we'd be happy to put you on the list. And right now, unfortunately, we're still mainly doing Zoom, but last summer we did an event in this room to talk about savings for your retirement and this situation. And as you remember, last year it was still almost impossible to get people into the Capitol. So it's great to be in the Capitol and people are kind of mingling about again.

Eleanor Mueller (00:57:33)

All right. Well Haydee, we'll turn to you as Crepes a Latte plots a path forward. What do you hope that policymakers keep in mind?

Haydee Caldero (00:57:44)

Yeah. As a small company, once again, I would really say putting employee ownerships into ESG initiatives at the corporate level and at the procurement level will really help grow employee ownership. Because now knowing that when I'm working with our clients like AbbVie Novartis, that we're getting preferential treatment for being employee owned, we'll make our procurement process. Let me give you an exact number. They take 90 days to pay us. We have to spend all of our money and they take 90 days to pay us. But the procurement people told me that if we were a woman or minority owned business, they could give us 30 day terms. So that's a big number in terms of financing.

So these types of things that could help smooth the pipes of employee ownership and allow for platforms for growth of small businesses that then go back to the investments of our local community are important. And they don't have to just be federal laws. They can be done at the state level as well as at the private level where you get these large multinational companies to acknowledge that they belong in the ESG forum of their reports.

Eleanor Mueller (00:59:00)

And we're going to take a brief pause actually for a new speaker and then come back for Ken's answer as well as questions.

Jack Moriarty (00:59:07)

Well Eleanor, thank you and thank you to the panel. My name is Jack Moriarty. I'm an Institute fellow and excited to be here in a new capacity as the new assistant director of policy analysis at the Institute. But most importantly, I'm delighted to be introducing Congressman Blake Moore, who's with us this afternoon. Congressman Moore represents Utah's first district. He joined Congress in 2021 and is an advocate for inclusive, pro-growth and aspirational principles. Congressman currently serves on the House Ways and Means committee, where he sits on the healthcare, social security, and work and welfare subcommittees. He also serves on the house budget committee.

Before being elected to Congress, Congressman Moore worked for small businesses and in the foreign service. He has expertise in education, financial services, public policy, healthcare, transportation, supply chain, waste Industries, and employee ownership. In his first term, Congressman Moore was the most successful freshman member of Congress in terms of legislation passed with four bills signed into law by President Biden and several more passed through committee. And of course, he's here with us today for his strong leadership on employee ownership as one of the lead sponsors of the Employee Equity Investment Act. And I'd be remiss not to also say that the congressman, I understand, is the starting center fielder for tonight's congressional baseball game. So thanks for joining us on the big game day, Congressman.

Blake Moore (01:00:28)

Thank you, Jack. All you need to know about Jack, you got to read bio, my legislative team. Oh my goodness, Sarah Kay, it's so great to see you. I look forward to chatting with you later. Oh, I did not expect to see you sitting back there. That's really exciting. My legislative mate on this particular issue, walked over and said, "Remember his name's Jack and he's the policy wonk on this." So he gets the details of this. And that is so critically important. It's the actual details that make this particular piece of legislation that we're working on with senators Ben Holland, Rubio, and then my good friend, and he probably plays in the outfield too, Dean Phillips for the Democrat team tonight. You can see there's a big focus on the baseball game today. There's a buzz in the air.

The concept of this and the actual policy of it is what continues to bring Congress together. And I'm hopeful that we can drive this forward. I don't know how you argue against something like ESOPs. At the root of what every single talking point is from a democratic or Republican standpoint, is growing the middle class, being able to provide a good positive future and a strong workforce. And nothing does more for, in my opinion, a strong retirement given the constraints that we have. Folks, we have a massive problem, from 1935 when there were 45 workers paying into one beneficiary system in Social Security. We have a very different system now. We have far fewer workers in a large retirement class. We have to be willing to think about what's best for the future. And there are amazing individuals that have led companies, that have led industries as their legacy, they want to make sure that they can have their legacy live on.

And how do you do that? By creating a strong, in most cases, private sector organization that is going to give ownership to that brand new worker, that frontline worker, that person that has never been able to do anything other than live paycheck to paycheck and just burn out all of their income on all of the things that they have to provide for. To be able to go to work and fundamentally change what we read about in all those texts that talk about the importance of equity and the importance of ownership. And this is giving that opportunity because it doesn't always exist. And so if we as members of Congress and lawmakers truly want to address income inequality, like this is at the root in the foundation of it. And that's why I'm so excited and supportive of it. And it takes individuals like Jim Sorenson, who's back in Utah, who has been successful, who has looked towards the future and turned his success into success for so many others.

And that's what I love about individuals that I get to interact with that are inside my network because they have taken positive experiences in either a professional life, a social entrepreneurship type of work, and they're trying to promote that in the best way possible. And so it's absolutely an honor for my team and I to be able to dig into this particular issue. And we got a little bit of pushback on the very first time we tried last term. We were late in the term, we weren't out ahead of it. And this year, and I'm glad to be able to share with this team because it's highly relevant for today, with the new chairman of the small business committee.

I looked at my team and I said, "Roger Williams is now the chair." I'm the starting center filter. He's the coach. He needs to make sure we have a strong outfield Because otherwise we don't win. And I'm going to let ESOPs, as a part of the plan and I want them to be okay with letting this go forward. So let's go ahead. I'm learning how to use leverage in this place of Congress. I said, "I'm not going to be your starting center filler unless we can get ESOPs through." So we're working on it. There are so many amazing positive aspects to this, but at the root of it just makes sense.

And it can fulfill any talking point any politician in these walls want to talk about in growing lower income and middle class Americans providing opportunity for them and ensuring their retirement. Because every single American out there is scared right now. They're worried about what's to come. They're sensible, they understand that if there is an insolvency pending with Social Security and that's just math, that's not rhetoric or politics, we need to make sure that we're thinking ahead of this. And this is an opportunity a decade, even more before this really gets to that point that we have an opportunity sincerely to address it in a way. And I go and I interact with companies in Utah that are doing this and there are so many positive outcomes that have come from it with really good, strong, positive employee retention, which is key to show for it. And so I'm thrilled to be somebody that can champion it and will do whatever I can and my team knows this is a priority. So thank you all.