

Effective ESOP Administrative Committees

NCEO Webinar Series

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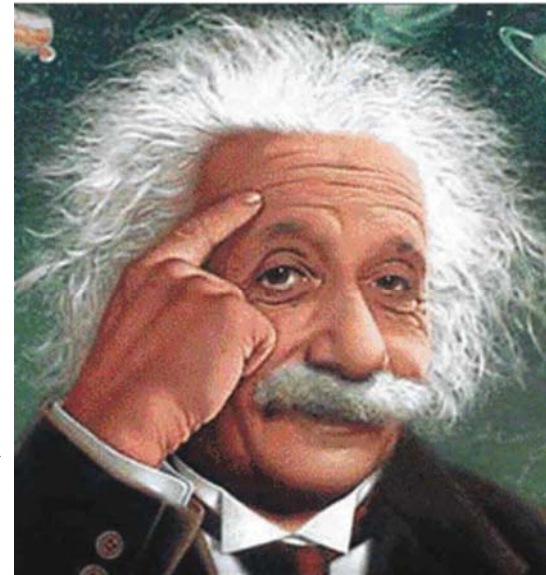
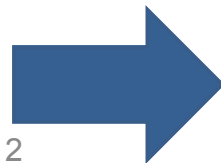
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Goals of Webinar Session

1. This Presentation Will Discuss the Items Noted Below. The Slides Themselves Can Serve as a Checklist for Working Groups Establishing ESOP Committees.
2. Definition of ESOP Committee Types
 - a) Administrative
 - b) Communication
3. Purpose/Mission of Committees
4. Structure and Establishment
5. Fiduciary Considerations
6. Meeting Format
7. Pitfalls

**(You Don't Have to Be This
Guy To Put It All Together)**



The Big Ideas in Assembling the Puzzle

1. Be very careful in defining fiduciary and non-fiduciary functions (we'll help here).
2. As with everything related to ESOPs, fully document all that is done.
3. Remember, this is really all about the folks in the plan – beside the technical aspects, the entire issue of administrative committees should also be viewed as an exercise in the development of your human capital.

(Albert may have moved on...but these guys haven't)



Fiduciary Considerations

Who is a Fiduciary?

Any person or body that has control or discretion in the management of ESOP plan assets; the liability is personal.

Is an ESOP Administrative Committee a fiduciary? There are distinctions:

- 1. Named Fiduciary (Trustees)**
- 2. Functional Fiduciary (Member of the BOD)**

The key question: What do they do?

ESOP Administrative Committees

- 1. What does the ESOP plan document say?**
 - a) Administer the plan fully?
 - b) Oversee day to day operations?
 - c) Communications only?

- 2. Establishment is not mandatory - the BOD is effectively the “administrative committee” if one is not set up.**

- 3. Appointed by the Board of Directors**
 - a) A subset of Board members?
 - b) Made up of employees - if so, elected by employees or take volunteers?
 - c) **Getting the right group**
 - Management only or a mix?
 - Consider complexity of assignment
 - Age, tenure, gender?
 - Departments/locations
 - Leadership skills

Sample Definition In a Plan Document

Section 2.8. Committee. The Employee Stock Ownership Plan Committee named by the Board to administer the Plan as provided in Article XI.

Section 11.1. The Employee Stock Ownership Plan Committee shall consist of not less than three nor more than nine individuals who shall be appointed by the Board to serve at the pleasure of the Board. Any member of the Committee may resign, and his successor, if any, shall be appointed by the Board. The Committee shall be responsible for the general administration and interpretation of the Plan, except to the extent all or any of such obligations are specifically imposed on the Trustee, Plan Administrator or the Board. In the absence of any appointment by the Board to the Committee, the members of the Board shall be deemed to constitute the Committee.

Section 11.2. The members of the Committee shall elect a Chairman and may elect an acting Chairman. They shall also elect a Secretary and may elect an acting Secretary, either of whom may be, but need not be, a member of the Committee. The Committee may appoint from its membership such subcommittees with such powers as the Committee shall determine and may authorize one or more of its members, or any agent, to execute or deliver any instruments or to make any payment in behalf of the Committee.

Sample Definition In a Plan Document

Section 11.3. The Committee shall hold such meetings upon such notice at such places and at such intervals as it may from time to time determine. Notice of meetings shall not be required if notice is waived in writing by all of the members of the Committee in office, or if all such members are present at the meeting.

Section 11.4. A majority of the members of the Committee at the time in office shall constitute a quorum for the transaction of business. All resolutions or other actions taken by the Committee at any meeting shall be by vote of a majority of those present at any such meeting and entitled to vote. Resolutions may be adopted or other action taken without a meeting upon written consent thereto signed by all of the members of the Committee.

Section 11.5. The Committee shall maintain full and complete records of its deliberations and decisions. Its records shall contain all relevant data pertaining to individual Participants and their rights under the Plan and in the Fund.

Section 11.6. Subject to the limitations of the Plan and of the Act, the Committee may from time to time establish rules or by-laws for the administration of the Plan and the transaction of its business.

Sample Definition In a Plan Document

Section 11.7. No individual member of the Committee shall have any right to vote or decide upon any matter relating solely to himself or to any of his rights or benefits under the Plan (except that such member may sign unanimous written consent to resolutions adopted or other action taken without a meeting).

Section 11.8. Subject to the claims procedure set forth in Article XVII, the Committee shall have the duty and authority to interpret and construe the provisions of the Plan and to decide any dispute which may arise regarding the rights of Participants thereunder, which determination shall apply uniformly to all persons similarly situated and shall be binding and conclusive upon all interested persons.

Section 11.9. No fee or compensation shall be paid to any member of the Committee for his services as such.

Section 11.10. The Committee shall be entitled to reimbursement out of the Trust Fund or by the Employer for its reasonable expenses properly and actually incurred in the performance of its duties in the administration of the plan.

Types of ESOP Committees

1. Administrative Committee

- a) Acts as the defined Plan Administrator
- b) Usually a committee of two to five members
- c) Possible fiduciary position with personal liability

2. Communications Committee

- a) Acts in an advisory role only reporting to Board
- b) Advocates within the workforce
- c) Usually a larger committee of 8 to 12 members depending on the size of the company
- d) Good vehicle for job level feedback to management.

Purpose and Mission of ESOP Committee

1. Act as the defined Plan Administrator?

- a) Selection of vendors
- b) Plan design and amendments to legal document
- c) Approve distributions to participants
- d) Review of TPA work
- e) Timely statements to employees
- f) Timely filing of form 5500 Annual Tax Return
- g) Measure ESOP repurchase obligation

2. Act in an advisory role only reporting to Board?

- a) Workforce education
- b) Field questions from employees
- c) Help with annual statement plan design
- d) Employee involvement activities
- e) Education of employees correlating performance to value of employer stock

Administrative Committee

1. Primary Goal of Administrative Committee

- a) Assume administrative oversight duties
- b) Possible management of plan assets
- c) Training and resources are important

2. May be a fiduciary depending on duties assigned

- a) ERISA dictates fiduciary status
- b) Check your commercial and general liability coverage specifically for fiduciary liability insurance, if needed.

Administrative Committee

1. **Administrative (Non-Fiduciary) Duties**
2. **Define eligibility**
3. **Monitor proper allocations, record-keeping, timely contributions**
4. **Track forms such as benefit elections, 5500 tax filing, QDRO's, etc.**
5. **See that proper procedures are followed to document distributions, employee complaints**
6. **Engage the Third-Party Plan Administrator (yep, confusing terminology!) – the ESOP recordkeeper (TPA)**
7. **Interpret plan provisions.**
8. **Provide the ESOP TPA with all needed information**
9. **Keep the committee meeting minutes**

Fiduciary Considerations

1. **Activities that put the Committee in a fiduciary role, whether defined by the Board as fiduciaries or not**
 - a) Vote ESOP shares for various issues that are not pass through
 - b) Management of plan assets-cash and stock
 - c) Approval of the ESOP buying of selling shares
 - d) Moving assets to another plan
 - e) Selecting advisors
 - f) ERISA compliance efforts

2. **Duties that do not usually impart a fiduciary capacity to Committee members:**
 - a) Approval of plan amendments
 - b) Establishment or termination of ESOP
 - c) Setting benefit level
 - d) Day to day administrative duties

Voting shares to seat the Board of Directors?

Meeting Management/Agenda

Organize the Meeting:

1. Selection of a chairperson to facilitate discussion, stay on track and promote participation by all (does not need to be a senior person)
2. Designate a particular individual to keep the minutes
3. Set a clear agenda/timeline

Steps in the Meeting Process:

4. Review the minutes of the previous meeting
5. Identify the members present
6. Review follow-up items from prior meeting(s)
7. Allow time for ‘brainstorming’ and sub-committee reports
8. Specify the action items for the next meeting as well as time, date and venue

Decision Making

- 1. Always research an issue thoroughly when identified**
- 2. Always document the process – even with informal notes**
- 3. Know when to seek outside guidance**
- 4. Free and open interchange of ideas**
- 5. Voting on the final decision:**
- 6. Have a clear protocol for all members to understand the decision process:**
 - By consensus? Majority vote? Different weighting of votes from larger divisions, location or chairperson?**

Some Pitfalls

1. Excessive intervention by management
2. Not retaining a clear focus on global mission and stated goals (getting off in the weeds)
3. Loss of clarity in role definition – members must get to know each other (particularly true for non-management)
4. Changing committee members too often
5. Managing potential conflicts via moderator or subcommittee for large operation
6. Lack of support/resources for the committee: Outside advisors from time to time? Ongoing education?
7. Poor management of participant/employee expectations.

Committee Review by Board

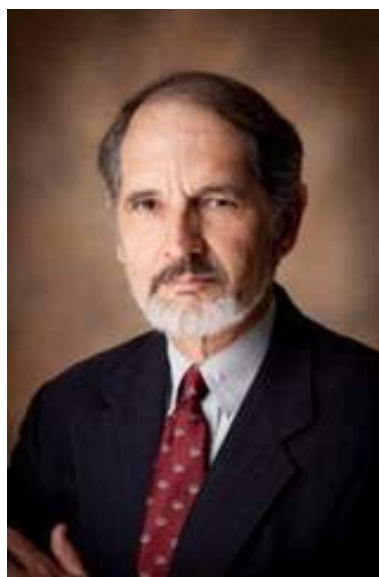
- 1. A periodic Board of Directors review of Committee performance is recommended at least bi-annually**
- 2. Any change in mission and purpose should be carefully considered**
- 3. The Committee chair should be in the Board meeting for the review and feedback**
- 4. The Committee should report to the Board any unusual issues or concerns at the annual meeting or more frequently, if needed**

Conclusion



Thank You!

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