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it's our business

newspad of the Employee Share Ownership Centre

Z/Yen Group Limited t/a The ESOP Centre

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WELCOME

In this issue

From the life president

Does what we call it matter, when it comes to financial advice? Employers are increasingly wary about overstepping the mark and yet participants in successful share plans need specific support as much as anyone, especially as their situation is different from that of the normal investor with a similar holding.

What is important for employee shareholders is to be equipped with basic knowledge. So-called financial "education" which trips easily off the tongue has always been a bad idea as it presupposes the need for intermediaries, for educators rather than a way of encouraging people to learn. That is why I favour the term "financial learning" - because it places the initiative in the right hands.

I am eternally grateful for a one-year part-time course in elementary bookkeeping at the Liverpool College of Commerce in my late teens.

The outcome of successful financial learning is financial capability. With financial capability, employees can use nous and reach good decisions.

A new kid on the block is the financial coach, who charges for advice which is truly independent (no adviser on a percentage of the take can be reliably independent). Early days but coaches may become part of the employer's answer to providing effective help. Watch this space.

Malcolm Hurlston CBE

British Isles symposium 2023—March 30

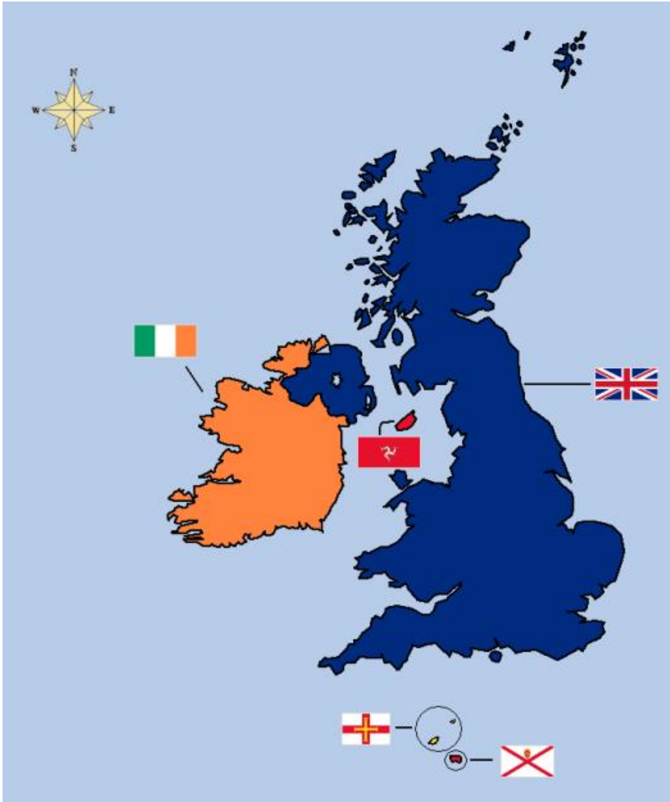
The Centre's annual British Isles Share Plans Symposium is set for Thursday March 30 2023 at Macfarlanes' central London offices.

Speakers' presentations will be available to absorb in advance before an afternoon of interactive panel debates, ending on a high note with a networking reception at which the 2022 newspad awards will be presented.

It will be an in-person event with added online content.

In the first three panels on **global economics and share plans**; **regulation & governance**; and **the future of all-employee share ownership plans and share plans in SMEs**, panellists will discuss share plans and inflation; Global share plans and whether US Esop transactions can be adapted for use in the UK; Global and UK updates on regulation and market developments; recent EMI HMRC discretion guidance and CSOP regulation; the future of SAYE including maturing "Covid" plans and how CGT affects them; the effectiveness of EMI and what happens when companies outgrow the qualifying limits.

Panel four will be dedicated to a **plan issuer case study** looking at post-IPO plan launches including UK SIP, ESPP & approved & unapproved executive option plans; how they launched, how they're performing, what the future looks like for the company's equity compensation.



The symposium will hear from speakers representing Achilles Therapeutics; Baker McKenzie; CMS; Computershare; David Craddock; Doyle Clayton; Equiniti; Investec Bank; Sixti and symposium host Macfarlanes.

Admission rates:

Centre member delegates: £425/each

Non-member delegates: £625/each.

Delegates from plan issuer companies will be ***admitted free*** *of charge.*

*All prices are subject to UK standard rate VAT (The prices reflect the generosity of our host Macfarlanes).

Please contact events@esopcentre.com to reserve a delegate place, or phone the team on +44 (0)207 562 0586

Thank you to our Esop Centre British Isles Employee Share Plan Symposium 2023 host:

MACFARLANES

Webinars

Esop Sofa – newspad review webinar Feb 23

Our next **Esop Sofa-Newspad Review** panel will be at 11:00am on Thursday, February 23. Share schemes experts will discuss their pick of articles featured in recent editions of "It's Our Business", newspad of the Esop Centre. Registration is open. You are welcome to take part.

Employee share plans and the benefits for SMEs – March 2

The Centre has teamed up with the London Chamber of Commerce and Industry (LCCI) for a joint webinar, on Thursday March 2 at 11:00am. It is hosted by Michael Mainelli, chairman, Esop Centre and Z/Yen Group and Richard Burge, chief executive, LCCI.

Speaker **Petronella West** will share her experience of setting up and running an EMI (Enterprise Management Incentive) scheme for her company's employees.

Petronella is the ceo of Investment Quorum. She is a double-chartered, pension transfer specialist with 35 years' experience in financial services. At Investment Quorum, Petronella provides personalised financial planning and investment solutions, with a particular focus on retirement.

Expert speakers from the Centre membership will explain:

⇒ Why employee share ownership is a "good thing" and why it is good for business

⇒ How it can be used to build better relationships with employees – how employee share plans can play a key role in contributing to employees' savings, morale and engagement - How it can encourage cohesion, promote productivity, and provide financial security

⇒ The pros and cons of Employee Share Ownership, how it works and how to do it.

It is free to attend and registration is open.

Thank you to our previous hosts of the Esop Centre British Isles Employee Share Plan Symposium

Baker McKenzie.

TRAVERS SMITH

WHITE & CASE

Prepare for changes to share scheme reporting in 2023

HMRC's latest Employment Related Securities Bulletin highlights that the completion of more data fields will become mandatory from April 6.

HMRC has provided advance notice of changes that it is making to the five employment-related securities (ERS) end of year return templates from April 6. This will allow employers time to prepare the information for their returns. This update was in HMRC's Employment Related Securities Bulletin 47.

The revised end of year return templates, guidance and technical notes will be published this month. They will reflect the following four changes.

First, completion of the "PAYE reference of the employing company" field will become mandatory for all end of year templates submitted from April 6. The employing company should be the one with the PAYE obligation.

Secondly, completion of the "Is PAYE operated Y/N" field will be mandatory for other ERS schemes and arrangements' end of year return templates submitted on or after April 6. This field is already a mandatory field on the other four ERS returns.

Thirdly, completion of the National Insurance number (NINO) field will become mandatory for all five types of ERS end of year return templates submitted on or after April 6. This will result in some consequential amendments to column title headings. Recognising that some people included on the return may not have a NINO, the bulletin explains the format for an alternative nine-character reference that should be used in exceptional circumstances.

HMRC will not share this reference with any other HMRC services. It asks that this reference is not provided to the individual or used in any other correspondence with HMRC. If the individual is allocated a NINO at a later date, it should be used for that individual in subsequent ERS returns.

The final change is to clarify the HMRC reference number to be used in the share valuation columns. The reference number to enter here is the HMRC valuation reference, where an HMRC valuation has been provided.

CSOP changes effective from April this year

Although almost everything from the government's 2022 Growth Plan has now been scrapped; one of the key changes which survived is the proposed changes to the Company Share Option Plan legislation.

The changes, which take effect from April, increase the number of companies which can implement a Company Share Option Plan.

The changes increase the market value of shares that can be subject to a tax-efficient CSOP option at the date of grant from £30,000 to £60,000; and relax the type of shares that can be used.

Strikes cost Royal Mail £200m

The owner of Royal Mail says the recent wave of strikes at the postal firm have cost it £200m so far. The row with the Communication Workers Union over pay and conditions has led to 18 days of walkouts since August. Royal Mail also said the number of voluntary redundancies it needed to hit job cut targets would be significantly fewer than the 5,000-6,000 it forecast last year. This was owing cutting the number of agency and temporary workers it and also due to staff turnover, the BBC reported.

Exec reward

How leading companies are tying executive pay to sustainability

The world's most sustainable companies are trying to find the most effective ways to link leaders' pay to planetary progress and purpose. Last month, *Corporate Knights* asked "Is it working?"

The proposition "you get what you pay for" lies behind businesses' repeated attempts to update their executive bonus plans, to find the best ways to motivate their top leaders to create real value for shareholders. Now, as investors and activists prod companies to embrace ESG targets, the world's most sustainable companies seeking ways to link leaders' incentive pay to planetary progress and purpose.

The question "Is it working?" was asked of a handful of companies on the Corporate Knights' Global 100 ranking that link the highest percentage of ceo incentive pay to achieving their organisations' ESG goals. These firms said their sustainability-linked compensation plans are too new to provide definitive evidence that linking ceo pay to corporate purpose is working – but they're confident they're on the right track.

Drop in compensation for Morgan Stanley ceo

Morgan Stanley ceo James Gorman's total compensation for 2022 slipped 10 percent to $31.5 million, the bank said on January 20.

Gorman's total compensation will include an annual base salary of $1.5 million, a cash bonus of $7.5 million, a deferred equity award of $4.5 million and a performance-based equity award of $18 million, according to a regulatory filing.

Morgan Stanley directors based the pay decision on "a challenging economic and market environment" with the performance of the firm "not as strong as the prior year".

The company had reported net income of $11 billion for 2022, lower than the previous year's $15 billion. Its stock lost 13.4 percent last year.

Wall Street's biggest banks, which saw profits dwindle in 2022, have cut jobs and stockpiled more rainy-day funds in preparation for a possible recession.

On January 19, JPMorgan Chase ceo Jamie Dimon's total compensation was unchanged at $34.5 million, with the board deciding not to grant him any special awards for 2022 or in the future.

Apple's rare ceo pay cut after investor pushback

Apple is cutting ceo Tim Cook's compensation by more than 40 percent to $49 million in 2023, citing investor guidance and a request from Cook himself to adjust his pay.

As part of the changes, the percentage of stock units awarded to Cook and tied to Apple's performance will increase to 75 percent in 2023 from 50 percent, as well as in future years, the company said in a regulatory filing on January 12. For 2022,

Exec reward *more*

Cook received compensation of $99.4 million, including $3 million in base salary, about $83 million in stock awards and a bonus. That was up slightly from 2021, when his total pay package was $98.7 million.

Other big tech companies cutting ceo compensation too

Apple attributed its cut to a big increase in shareholders voting against its executive compensation at its last annual meeting.

Several other big tech companies, most notably Amazon, also saw a big vote against their executive compensation last year, something that got virtually no attention at the time.

Forbes reported that the shareholders of other big tech companies have also voiced objections to executive compensation paid out last year, making it easy for consultants to predict that more tech companies will likely follow Apple and cut executive compensation. The Information quotes Aalap Shah, a managing director at compensation firm Pearl Meyer, who said that the “vast majority of his clients in the tech industry are planning to cut their executives’ pay this year by giving them smaller equity packages.”

Amazon ceo Andy Jassy was awarded a stock grant of $212 million in 2021, to vest over a 10-year period. Jassy’s predecessor, Jeff Bezos, did not get any stock grants. The 2022 proxy filing says that the 2021 grant will likely represent most of Jassy’s compensation in coming years.

At the same time, Amazon is taking other actions to be thriftier. It has announced that AmazonSmile charity donations will be shut down on February 20 2023. This charity allowed customers to donate 0.5 percent of an eligible item’s purchase price to charity. Amazon has donated $500 million to charities selected by customers since the programme was launched in 2013 though most charities actually received small amounts. At a time when the company is making mass lay-offs throughout the organisation (which will amount to about 18,000 people), it is appropriate that other cost-saving measures also be initiated. In this case, the optics are problematic when people and charities are the big losers.

Why executive pay matters to all workers this year

Investors’ Chronicle reported that the average FTSE 100 chief executive’s pay now stands at £3.41mn – 103 times the average full-time worker’s pay of £33,000. The gulf seems to be widening: chief executive pay has increased by an inflation-beating 39 percent since this time last year, while average worker pay grew by just six percent over the same period.

Luke Hildyard, director of the High Pay Centre, commented that “in the worst economic circumstances that most people can remember, it is difficult to believe that a handful of top earners are still raking in such extraordinary amounts of money”.

Exec reward *more*

While this feels unpalatable, reports the Investors Chronicle, we should consider whether it makes economic sense. Students of economics learn that market forces can deliver high pay: in a competitive labour market, the combination of high productivity and scarce skills with few substitutes can allow workers to command a hefty wage. Large companies are hard to run and require sophisticated management talent. But research from the Economic Policy Institute found that the compensation of chief executives far outpaced that of the top 0.1 percent of earners with similar skills.

Alexander Pepper, professor of management practice at the London School of Economics (LSE), takes a "market failure approach" to executive pay. He notes that an efficient market requires many buyers and sellers, homogeneous products, plentiful information and little economic friction. But the problem with the market for chief executives is that "practically none of these conditions hold good". As a result, executive labour markets fail to provide effective price signals.

Instead, remuneration committees can find themselves playing a real-world version of the prisoner's dilemma: offering higher pay in the hope that it will allow them to attract the best talent. This triggers an arms race, and companies are left no better off than if they had all paid more moderate salaries.

Empirical evidence gathered over the past 35 years has failed to establish a strong link between executive pay and firms' financial performance. But it can be hard for investors to do much about it. As long as expectations for dividends and capital gains are met, they are reluctant to intervene, expecting the costs of intervention to exceed any individual benefit.

But high executive pay awards could be a particularly tough sell this year. The Investment Association warned in November that "with the cost of living crisis hitting UK households, investors want to see companies show restraint on executive pay and bonuses". Workers will be inclined to agree.

The UK labour market remains troubled by shortages, tipping the balance of power. The Investment Association argues that for the year ahead "the retention and motivation of employees below the executive level will be key for many companies". Keeping workers happy matters: dissatisfied workers could strike – or even leave for good. Kallum Pickering, chief economist at Berenberg Bank, has argued that today's industrial action could be viewed as the "expression of the increasing wage bargaining power of workers", while data from the World Economic Forum suggests that 33 percent of UK workers are disposed to leave their current job over the next three to six months.

Even if employees don't move on, the repercussions of a disgruntled workforce could still be significant. The Investment Association warns that "board decisions could impact on the productivity of the whole workforce". In a time of high inflation and labour shortages, unpopular executive pay awards could have company-wide consequences.

Exec reward *more*

Executive remuneration in FTSE 250 companies - 2022 report

The 2022 market data report for executive and non-executive directors was released in early January. Available via *Lexology*.

Utility ceos receive $2.7 billion from 2017 – 2021

Investor-owned electric and gas utilities paid their ceos $2.7 billion between 2017 and 2021, according to corporate data reviewed by the Energy and Policy Institute.

Ceos for the 58 companies reviewed for this analysis received more than $629 million in 2021, a nearly 40 percent increase from the $451 million paid in 2017. That is far higher than the 14.8 percent Consumer Price Index inflation rate from January 2017 to December 2021.

The highest paid ceo in 2021 was PG&E's Patricia Poppe, whose compensation totaled $51.2 million; the company's proxy statement says that $35.8 million of her compensation package were "one-time awards intended to compensate her for compensation that was forfeited from her prior employer." Centerpoint Energy ceo David Lesar received the second highest compensation at $37.8 million; in April 2022, shareholders signalled disapproval by voting against a resolution related to Lesar's 2021 compensation package. Lesar received the full amount, despite the shareholder vote.

In addition to large compensation packages for ceos, some utilities also provided multi-million dollar payments to "Executive Chairmen," which are often retired ceos. Those payments sometimes rivalled or even exceeded payments to ceos, which means that total payments in some years soared even beyond what is shown by ceo compensation packages.

Employee ownership news

Staff at employee-owned firm receive £3,600 profit shares in first year

Staff at Ison Harrison, one of the largest law firms to be employee owned, have each received a tax-free profit share of £3,600 after the first year of the new structure.

The Yorkshire practice had its best-ever year, posting a 14 percent increase in turnover in 2022 to over £19m.

Managing director Jonathan Wearing told *Legal Futures* that moving to employee ownership had contributed to the success – by giving staff a stake the firm's performance – but that he expected it to have a bigger effect now they had seen the direct benefit.

Staff were told of how much they would each receive – irrespective of role and whether they are full- or part-time – at the firm's Christmas party. It was, he said, "incredibly well received". The payment is separate from any individual performance bonuses.

New EOTs this month:

- Personal insolvency firm Harper McDermott Ltd
- Veterinary practice Archway Veterinary Centre
- Manufacturer of timber garden buildings and processor of machined timber Woodlands Home & Garden Group
- Technology software recruitment consultancy Understanding Recruitment Group
- Gifts and gadgets retailer Gift Universe
- Historic architecture, engineering and Net Zero practice DB3 Group

Canada

New coalition: EO is an urgent multi-billion dollar opportunity

The not-for-profit Canadian Employee Ownership Coalition ("CEOC") says Employee Ownership Trusts are a tool for creating a stronger, more resilient economy and building middle-class wealth. At a time when, according to a recent report from the Canadian Federation of Independent Business (CFIB), 76 percent of business owners say they're planning to exit their business over the next decade, CEOC believes Ottawa must act now to keep its commitment to introduce EOTs into the Income Tax Act, along with new incentives for retiring business owners to sell their companies to their employees.

The CEOC is a diverse, non-partisan network of Canadians from the business, banking, nonprofit, academic and charitable sectors who believe that with the right policies in place, employee-ownership will scale quickly in Canada, creating billions of dollars of wealth for everyday workers across this country. A recent report confirmed this potential, projecting as many as 750 companies could sell to EOTs within eight years, creating as much as $9.6B in wealth for as many as 115,000 Canadian workers.

Majority of employers tying ESG metrics to executive pay

A majority of employers are tying ESG (environmental, social and governance) metrics in compensation plans for ceos or other named executive officers (NEOs), according to a new report.

Specifically, 67 percent of companies in the TSX60 index and 80 percent of CEC40 companies (which have been identified by Climate Engagement Canada for being among the country's top carbon emitters) disclose the use of one or more ESG metrics in these compensation plans, according to law firm Fasken.

Disclosing the use of ESG metrics in executive compensation plans is common among companies in the following industries:

- ⇒ transportation and environmental services (100%)
- ⇒ conglomerates (100%)
- ⇒ oil and gas (93%)
- ⇒ metals and minerals (92%)
- ⇒ financial services (91%)
- ⇒ utilities - gas/electrical utilities (75%)
- ⇒ merchandising (67%)

But it's an uncommon practice in the industrial products - technology (20 percent) industry.

Among companies that disclose ESG metrics in executive compensation plans, 50 percent of TSX60 companies and 55 percent of CEC40 companies also have ESG metrics incorporated with other types of metrics (e.g., such as customer experience) rather than being separate ESG metrics.

Fewer list ESG separately, but generally without distinguishing between E&S (29 percent and 15 percent, respectively), some have E-related issues only (21 percent and 24 percent, respectively) and others S-related issues only (26 percent and 31 percent, respectively), according to the Fasken report.

India

Porter offers liquidation of Esop

Porter, a tech-based on-demand logistics company, has announced the liquidation of ₹50 crore in Employee stock ownership plans for its current and former employees.

The liquidation is aimed to encourage its talent for their valuable contributions by providing them with a wealth creation opportunity.

Startup offers finance for unlisted companies Esops

Employees of startups and other firms yet to go public can now raise funds to purchase shares under their employee stock option plan. Startup ESOPDhan, which is focused on funding employees of such companies, has started financing unlisted Esop purchases and is looking at a ₹500-crore.

While many lenders are willing to provide loans to employees of listed companies to buy Esop shares, funding is a challenge when it comes to unlisted companies.

Norway

Adevinta ASA employee share purchase plan

Employees of Adevinta ASA had, on January 24 2023, purchased 83,154 Adevinta shares through a broker on the Oslo Stock Exchange as part of its employee share purchase plans. The average share price was NOK 85.584817 per share. The shares will be transferred to the participants in the coming days. The transactions are related to the fourth enrolment window in the Adevinta Share Purchase Plan for 2022 and the second enrolment window in the Hybrid Adevinta Share Purchase Plan for 2022 which closed in September 2022. It was based on savings made during October, November and December 2022.

Shares purchased by employees who are primary insiders are disclosed in an attachment to the release and the notifications of the transaction are also attached to the press release in accordance with MAR regulation.

The purpose of the employee share purchase plan is to motivate and retain employees as well as to increase their interest in Adevinta's result and performance through owning shares. After two years of ownership, the company will allocate one bonus share for every share bought in connection with this offer.

USA

Republican politicians target proxy firms ISS & Glass Lewis over ESG

A group of 21 Attorneys General from Republican states have sent a letter to proxy advisory firms Institutional Shareholder Services (ISS) and Glass Lewis, taking issue over the firms' support for climate and DEI-related issues at companies, and warning them that their recommendations to shareholders in these areas are in violation of their duties to consider their clients' financial interests.

The letter marks the latest move in an ongoing anti-ESG push by Republican politicians in the US, which has primarily targeted large investors, but has also seen officials warning law firms about the advice they provide to clients regarding ESG initiatives.

In a statement announcing the Attorneys General's challenge to the proxy firms, Kansas AG Kris Kobach, one of the letter's signatories, claimed the firms' "ESG driven agenda" threatened the pensions of the state's workers, and added: "Those pension funds must be invested to maximise their return, not to advance any particular political agenda."

In the letter to the proxy firms, the Attorneys General state that the firms' recent ESG-related commitments may interfere with their ability to honour their legal obligations to clients, and ask for assurance that the firms "will cease such violations and commit to following the law."

The letter focuses specifically on ISS' and Glass Lewis' recommendations regarding climate and diversity, equity and inclusion (DEI) issues. On the climate front, the Attorneys General say that each of the firms have "pledged to recommend votes on company directors and proposals based on whether a company is implementing "net zero emissions" goals and related climate commitments," arguing that this amounts to elevating non-financial considerations based on "social goals," above financial considerations, and that pursuing non-zero goals is antithetical to maximising value, based on the IEA's contention that the probability of successfully achieving global net zero goals is rapidly narrowing.

The Attorneys General also ask the firms to describe their coordination with climate-focused investor engagement group Climate Action 100+, and their discussions with investors that belong to the Net Zero Asset Managers' initiative.

The letter also questions the firms' policies around DEI, including recommending against directors on boards that have insufficient racial, ethnic, or sex-based diversity, and claiming, for example, that ISS' policies have led to support for "proposals that would force insurance companies to gather race data in apparent violation of state law."

The Attorneys General stated: "Your actions may threaten the economic value of our States' and citizens' investments and pensions—interests that may not be subordinated to your social and environmental beliefs, or those of your other clients."

Reported by *ESG Today*.

USA

Executive compensation clawback law effective

On October 26 2022, the Securities and Exchange Commission adopted Rule 10D-1 "Listing Standards for Recovery of Erroneously Awarded Compensation." The rule has two main requirements. First, it directs national securities exchanges to require listed issuers to develop and implement written policies to claw back incentive-based executive compensation if the issuer is later required to issue an accounting restatement. The policies must comply with the elements set out in the final rule. Secondly, the rule directs exchanges to require that issuers publicly disclose their written policies. Reported Cahill Gordon & Reindel's Bradley J Bondi and Michael D Wheatley in *Mondaq*.

The final rule creates important new requirements for public companies, with significant consequences for noncompliance. An issuer that fails to adopt, comply with, and disclose a clawback policy will be subject to delisting from the exchange. The final rule follows recent enforcement efforts to deter corporate misconduct by clawing back executive compensation. Rule 10D-1 extends those efforts by increasing both the likelihood that a company will have to claw back incentive-based compensation and the universe of individuals who may be subject to a clawback. The rule became effective on January 27 2023.

Disney investors pay twice for half-leadership

Walt Disney's poor succession planning is costing its shareholders twice over. The entertainment giant has earmarked around $60 million in pay and severance for former chief executive Bob Chapek and his replacement Bob Iger – who is returning for a second go as ceo.

Chapek, who was fired without cause in November a mere six months after the board renewed his contract, is getting about $20 million in his termination agreement, according to Disney's annual filing published on January 17. That includes salary, pro-rated bonus and restricted stock units. Since Chapek had fulfilled his term as chief executive at the end of Disney's fiscal year ending September 2022, he gets a compensation package worth $24 million too, giving a grand total of roughly $45 million.

New law promotes worker-owned businesses

Among the new laws taking effect in California this year is the California Employee Ownership Act, which encourages small-business owners to give their employees a stake in the company. Passed with unanimous support, the law sets up an employee ownership hub in the governor's office to support companies that want to pursue this business model.

The state currently has 100 worker-owned cooperatives, and 800 more businesses with employee stock ownership plans. But research from the nonprofit Project Equity identified about 350,000 business owners near retirement age who might want to consider worker ownership in California.

The Employee Share Ownership Centre is a membership organisation which lobbies, informs and researches on behalf of employee share ownership.

The Z/Yen Group