EsopCentre

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it's our business

newspad of the Employee Share Ownership Centre

Z/Yen Group Limited t/a The ESOP Centre

1 King William Street, London EC4N 7AF

tel: 020 7562 0586 e-mail: esop@esopcentre.com www.esopcentre.com

In this issue

From the life president

Although Fred Hackworth has retired, newspad continues to follow the Roadchef imbroglio with great interest.

It is no longer a campaign but an opportunity for all interested parties to stay in touch with developments.

As the founder of the Centre and now life president I hope to see the original Roadchef employees fairly rewarded and lessons learned. I recognise that the funders of the litigation made continuing pursuit possible and am equally concerned to avoid a repeat of Dickens' Jarndyce v Jarndyce, where nothing was left in the pot.

With this in mind I have encouraged all Fred Hackworth's contacts to share their news and views with me, openly or in confidence - which will be respected.

Currently there is an unwelcome hiatus. Costs increase with delay. Although an application was made in July, a date may not be set even in the spring.

Perhaps it is time for a courageous government to cut this gordian knot.

Malcolm Hurlston CBE

Guernsey conference 2023—January 27

The Centre is set to resume its programme of annual conferences on **Esops and trustees** in Guernsey in this month.

The **Employee Share Schemes & Trustees Conference Guernsey,** held in conjunction with STEP Guernsey, it will mark our first return to the Crown Dependency since 2019, the success of which we look to emulate, building on the achievements of this industry-leading networking and learning opportunity.

The seminar will be on **January 27 2023** at the Old Government House Hotel, St Peter Port, and concludes after a networking lunch.

Guest of honour will be Hon. Tasha Ebanks-Garcia, Representative of the Cayman Islands in the UK. Many firms are present in both Cayman and Guernsey. She will make a wide-ranging speech.

Centre experts will distill the key issues and opportunities now facing trustees and employee share scheme professionals.

Tickets:

Esop Centre/STEP members: **£420**/each

Non-members: **£538**/each

Multi-booking discount**: 50% off** cost of ticket for your **third delegate.**

To reserve your place(s) email esop@esopcentre.com or call the team on 020 7562 0586.

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.

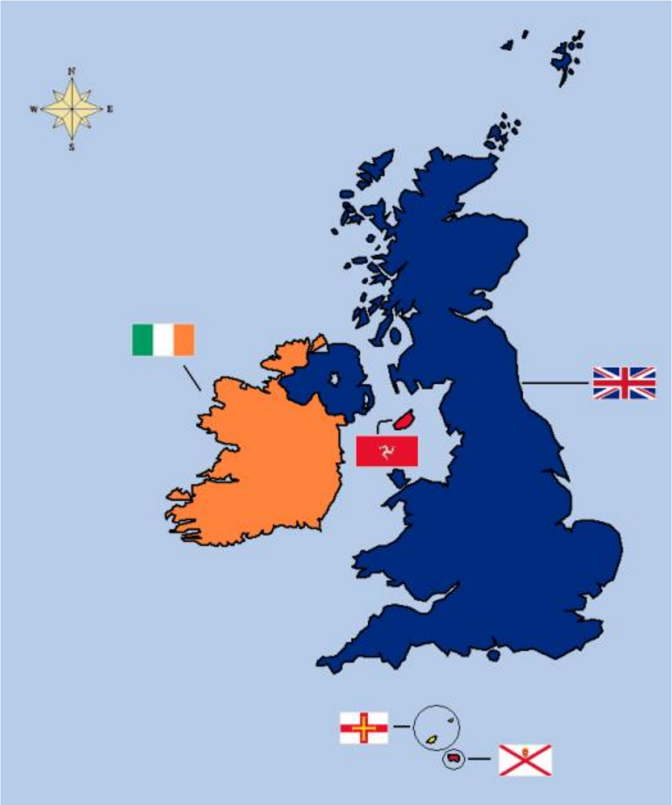
It will be a hybrid event with speakers' presentations available to absorb before an afternoon of interactive panel debates, concluding with a networking reception at which the 2022 newspad awards will be presented.

Centre members are invited to take a speaker place. Speakers who propose to present on a case study should feel free to invite client *plan issuers* to share their slot (**all issuers may attend free of charge**). To register as a speaker and to suggest a presentation topic, email esop@esopcentre.com

A list of working panel titles and further updates is available from the event web page.

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

(Thanks to the generosity of our host Macfarlanes, we have been able to keep prices low).

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

MOVERS & SHAKERS

Vicki Allen left her role as head of EBTs and Pensions at **Kleinwort Hambros** at the end of December. Newspad understands that she will take up a new position with JTC Group later this month. Client director Paula Fry will take over Vicki's role as Esop Centre membership contact at Kleinwort.

Michelle Carter moved from **Sanne Group**, joining Ogier as a director, late last year. Sandra De Sousa, director of corporate services will take Michelle's place as Esop Centre membership contact at Sanne.

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

Baker McKenzie.

TRAVERS SMITH

WHITE & CASE

UK CORNER

PFS president resigns following CII directors debacle

Personal Finance Society (PFS) president Caroline Stuart has resigned in the wake of the Chartered Insurance Institute (CII) appointing three institute directors to the PFS board last month, reported *Portfolio Adviser*.

Stuart had been working with the PFS for close to eight years.

In a statement on January 5 2023, she said: "The untold pressure that the PFS board is currently under is now also at the detriment of my health and I have taken the very difficult, but I feel only, decision available to me to preserve my own health, and have resigned my position as president and member director of the Personal Finance Society, with immediate effect."

Stuart added that the PFS board has been "under tremendous stress and pressure from the CII from threats such as de-registering the PFS and flooding the PFS board with institute directors".

"This pressure and stress has increased exponentially since the CII appointed further institute directors to the PFS board on December 21 2022 with the intention to appoint a majority after a 30-day consultation period. All done under the guise of alleged 'governance failings'," she added.

"I, along with my fellow member directors, fully refute all allegations made by the CII. In my time as both a member director, vice president and president, my fellow member directors and I have taken our fiduciary responsibilities extremely seriously.

"We have performed them diligently, professionally, carefully and with the utmost integrity. These allegations are baseless and without foundation and, in my opinion, a clear attempt to justify accessing PFS funds to support a failing CII."

Disguised remuneration—Spotlight 61

HMRC has published tax avoidance Spotlight 61 'Disguised remuneration: remuneration trusts used to reduce profits and disguise income'.

This latest spotlight follows Spotlights 51 and 56 which warned about remuneration trust tax avoidance schemes, explaining why HMRC considers that they do not work, and three tax tribunal decisions released in 2021 and 2022. In all three cases, the same scheme had been used and the tribunal found that the arrangements were designed to artificially reduce company profits and to disguise the income of individuals who were directors, employees and/or shareholders.

In each case, the tribunal disallowed the contributions to the trust and scheme fees for Corporation Tax purposes. In two of the cases, the tribunal further found that loans made to individuals were subject to PAYE and National Insurance Contributions (NICs) as disguised remuneration. In the other case, the trust contribution was treated as a dividend.

HMRC warns that further tax charges, including the Loan Charge and Inheritance Tax, may be due from scheme users and that they will take action against remuneration trust schemes using the full range of legislation. This would include considering whether to issue Follower notices and, if relevant, Accelerated Payment Notices (APNs) as well as using their powers under the Promoters of tax avoidance schemes regime against those who promote tax avoidance schemes.

Anyone who has used a remuneration trust or similar scheme and who is concerned about it, is advised to take independent tax advice and contact HMRC. Anyone still using such a scheme is advised to withdraw from it as soon as possible. Scheme users may be able to settle their position using the Disguised remuneration 2020 settlement opportunity and it may be possible to spread the cost by agreeing to pay the tax due in instalments though interest will still be charged.

FTSE100 ceos paid more in three days than workers' annual salary

Chief executives of the top 100 FTSE companies made more money by 14:00hrs on January 5 2023 than the average UK worker's entire annual salary. The analysis by thinktank the High Pay Centre based the findings on median average remuneration figures for both groups. This was £3.4m for ceos – 103 times the £33,000 average full-time worker salary, the *Guardian* reported. Ceo pay is up 39 percent on January 2022 and the median worker's pay by only six percent over the same period.

Will automation and AI revolutionise the world of benefits in 2023?

Artificial Intelligence and greater automation are infiltrating almost every area of business, including employee benefits. The trend is expected to increase this year, offering greater personalisation of benefits for employees and providing employers with the information they need to shape strategies. An *Employee Benefits* magazine report suggests that this can mean offering employees the benefits that best suit their needs, where "too much choice is confusing". This is heading towards automation not only making that choice easier, but also assisting employees in making choices they didn't know they needed. Yet there will always be a need for peer group involvement.

Employee ownership trusts

Employee ownership trust 4most lines up 'progressive' float

According to *The Times*, a business majority-owned by its employees is planning to float in the spring in what could be a first for the London Stock Exchange and also, its bosses believe, could be the first of many such City debuts.

In the initial public offering, valued at about £100million and set to take place on Aim, the exchange's junior stock market, 4most is intending to sell a stake, with the money raised used to pay off loans owed by the credit risk consultancy's employee ownership trust, accelerating its activation by at least five years. The trust, which will own 51 per cent of the shares, will then benefit fully from its share of the company's profits.

Will to Win now Park Sports

The tennis company that operates the tennis and padel courts in Regents Park, has changed its name. Having traded for over 25 years as a private company, Will to Win Ltd, it has changed its name to Parks Sports and is now an employee owned trust.

In return for operating the sports facilities at Regents Park, Hyde Park and Greenwich Park the company donates a significant proportion of its annual income to The Royal Parks charity, to help care for London's parkland.

Photo by Caitlyn de Wild on Unsplash

Other new EOTs this month:

- Engineering consulting services provider Crookes Walker Consulting
- Commercial Vehicle rental and fleet management provider the Herd Group
- Holiday homes manufacturer Aspire Park and Leisure Homes
- Timber framing pioneers Carpenter Oak
- Wholesale business S&W Wholesale
- Office furniture manufacturer Bisley
- Comms agency Camargue Group
- Recruitment firm Seven Search and Selection

Exec reward & ESG

Investment Association's 2023 Principles Of Remuneration

In a piece for *Mondaq*, Jeremy Edwards, Victoria Kirsch and Josephine Lynch of Centre member Baker McKenzie drew attention to the IA's revised Principles of Remuneration for 2023, together with its letter to remuneration committee chairs. The IA urges remuneration committees to be mindful of the cost of living crisis and inflationary environment and encourages restraint and good practice, as displayed during the Covid pandemic. Any increase to variable pay opportunities in 2023 will need to be clearly explained in the wider context.

Bonuses are back and investors in British companies are ready for battle.

Leading shareholders have told *the Financial Times* they expected companies to behave with restraint when awarding executives this year as the cost of living crisis leaves many of their workers worse off.

Diversity equity and inclusion for business— Amazon

Last month the *Financial Times* reported that soaring executive pay is prompting resistance from those who believe business should play a role in shaping a fairer, more equitable society.

On a web page setting out its views on everything from privacy to climate change, Amazon, the ecommerce company, states that diversity, equity and inclusion "are good for business — and more fundamentally, they're simply right". Such arguments are commonplace at large companies, yet there is one area where business leaders' commitment to equity is less clear.

Andy Jassy, Amazon's chief executive, earned nearly $213mn in 2021, much of it thanks to an award of restricted stock units that he can cash in over the next decade. At the same time, the median Amazon employee earned just under $33,000. A ceo pay ratio of 6,474:1 is unusual but Amazon is not the only company with a yawning gap between pronouncements on equity and the vast sums they pay their most senior managers.

More companies linking executive pay to stakeholder measures, survey finds

Corporate Secretary reported that more than three quarters (78 percent) of large companies now include stakeholder-based metrics in their executive compensation plans.

That figure is an increase from 73 percent in 2021 and 64 percent in 2020. Marked regional differences persist, however. Almost nine in 10 companies surveyed in continental Europe this year (88 percent) used stakeholder incentive

Exec reward & ESG *more*

measures, compared with 63 percent of those in the US and 62 percent of those in Canada.

The most frequently used stakeholder incentives involve ESG metrics, but they also include considerations involving customers and community.

Brian Bueno, ESG leader at Farient, says fewer US companies are linking executive pay to ESG and other metrics than those in other regions in part because there is a shorter history of them considering ESG issues in general. In the EU, companies also face more regulations requiring climate risk disclosures.

Executive pay linked more to ESG progress

Meanwhile, *CFO Dive* reported that a recent Willis Towers Watson survey found:

- Sixty-nine percent of Standard & Poor's 500 companies tie incentive compensation to at least one environmental, social and governance (ESG) performance measure, a nine percentage point increase compared with last year.
- Two out of three S&P 500 companies link pay to "social metrics" such as employee health and safety, or to diversity, equity and inclusion.
- US companies still lag far behind their counterparts across the Atlantic. All but 10 percent of European companies — including UK businesses — use ESG incentive metrics, with France and Germany leading at 100 and 98 percent, respectively.

Pressure from investors, the need to accelerate carbon emissions reduction and the reward in capital markets for companies that pursue long-term sustainability plans have prompted many companies to tie executive pay to ESG metrics, according to Michael Siu, WTW's senior director for executive compensation.

Church finds no link between executive pay and company performance

Executive pay bears no connection with company performance, participants at a recent summit on the topic were told.

The Executive Pay Summit: Governance, Responsibilities and Excess, convened by the Church of England Pensions Board (CEPB), took place last month online with delegates including asset owners, regulators, FTSE100 remuneration committee chairs and other stakeholders. The summit reviewed the state of executive pay and considered how to solve the problem.

Adam Matthews, chief responsible investment officer, CEPB, who chaired the summit, said: "We convened it with fellow asset owners because we know the current executive pay system is broken, and not only enables but protects excess with a pretence of accountability."

Exec reward & ESG *more*

On the summit's agenda was consideration of how chairs of remuneration committees could be better held accountable, as well as whether a review of the shareholder rights of asset owners was needed, and whether investors need a binding, rather than advisory, vote on the outcomes of pay policies. Matthews said that the results of votes on remuneration at company agms had often been ignored.

Simon French, managing director, head of research and chief economist at Panmure Gordon, said that empirical evidence from a number of studies and different countries had found no link between executive pay and company performance. He did, however, caution that this was *not to be confused with the strong evidence of a link between structuring incentives and underlying performance*.

ESG and incentive compensation plans: are investors satisfied?

In a post for *Harvard Law School Forum on Corporate Governance*, Matthew Behrens and Giulia La Scala of Shearman & Sterling LLP wrote that the "stakeholder" view of corporate governance, which argues that corporate decision-makers have a responsibility to consider the impact of corporate activities not only on shareholders but on society as a whole, has long been debated, with some scholars even finding arguments in the writings of Adam Smith that companies may weigh competing stakeholder claims. Recent years, however, have witnessed the "stakeholder" view no longer confined to the ivory halls of academia, but present in the wood-panelled board rooms of institutional investors and the fluorescent-light-drenched offices of government regulators. For those that would argue that issuers are embracing this view, the continuing growth of ESG metrics in incentive compensation plans has become a primary piece of evidence. For example, the 2022 survey data show that 60 of the Top 100 Companies disclose that they incorporate ESG metrics into their incentive compensation programmes, which is a 19 percent increase from the previous year.

Notwithstanding their seeming embrace of the "stakeholder" view, US issuers are facing increasing pressure to prove that their claims of stakeholder focus are grounded in fact and evidenced by action. To that end, disclosures around ESG metrics in incentive plans are increasingly being challenged as vague or lacking the transparency necessary for outsiders to gain a true understanding of the issuer's ESG goals and management's performance against those goals.

Innovative share-incentive plan launch

Prysmian Group, the world leader in the energy and telecom cable industry, recently launched BE IN, an employee stock ownership plan designed to bring additional benefits to more than 25,000 of the company's global factory workers and sales teams. In North America, 5,100 associates are eligible.

"BE IN is unique as it helps us better align with our factory associates and what is important to them," said Andrea Pirondini, ceo of Prysmian Group North America. "We're creating long-term shared value and helping our employees feel more invested in the work they do every day. It is a way for us to connect to our core mission of providing superior cable solutions and our consistent excellence in execution, which leads to significant growth and profit."

Currently, Prysmian employees hold approximately three percent of the company's capital, a significant percentage in a public company where there are no majority shareholders capable of exercising control.

Amazon to axe 18,000 jobs

Amazon plans to cut more than 18,000 jobs in a battle to save costs. The online giant, which employs 1.5 million people globally, did not specify which countries the job cuts would hit but said they would include Europe. Most of the job losses will come from its consumer retail business and its HR division, the *BBC* reported. Amazon had already stopped hiring new staff and many warehouse expansions.

Stock-promoting social media influencers charged

Eight influencers who promoted stock on social media have been charged in a $100m (£81m) fraud scheme. The young men promoted themselves on Discord and Twitter, posing as successful traders and encouraging their combined 1.5 million followers to invest in selected shares. According to charges brought by the US Securities and Exchange Commission, when the price of those shares rose, they would regularly sell them off without ever disclosing their plans. Each could also face up to 25 years in jail for conspiracy to commit securities fraud, however the accounts are still currently live. *Sky News* lists the profile names.

Trinidad, Canada and UK - a tangled skein

One question that has not been ruled on in court yet is whether an employee, apart from earning wages and salary and other benefits, such as vacation, pension and medical benefits, without it actually being stated as part of their employment contract, also automatically earns a “share ownership benefit” owing to their contribution to the growth and development (or a deduction in loss of share ownership in the case of bankruptcy) of the company they work for. This is not covered by either common law or legislated law in Trinidad and Tobago.

In a recent case in Canada, however, Chin v Beauty Express Canada Ltd, the Ontario Supreme Court of Justice considered just that issue, although from a different angle.

In that case the aggrieved worker had worked for the first company for 14 years, until it went bankrupt, and six years for the second company, which was not in any way connected to the first (in other words, not a successor or assignee company). But the employee was doing the same things and reporting to the same supervisor in the same location, which in UK law would possibly qualify it as being a successor company, although not under the Employment Standards Act (the ESA) in Ontario.

Photo by Kier... in Sight on Unsplash

Global public companies use employee equity

According to a survey conducted on behalf of Morgan Stanley at Work last year, more than one-third of global public companies offer some kind of employee equity ownership programme, often in the form of discounted stock offerings.

But as these employee ownership initiatives evolve, they are no longer reserved for large public companies, nor are they limited to stock purchases.

A new initiative launched by KKR partner Pete Stavros is forging a path for companies of all sizes and industries, both private and public, to introduce tailored employee ownership models, often with programmes that extend equity at no cost to employees. Now, the effort has caught the attention of private equity investors in the middle market.

Tailwind now "believers"

Tailwind Capital, a middle-market private equity firm targeting the industrials and technology services sectors, is PE backer of Ownership Works.

Jeff Calhoun, Tailwind's managing partner, took steps to deploy a shared equity model following the firm's investment in National Trench Safety.

"The company, before we invested in it, had a great workforce, but struggled—as a lot of industrial service businesses do—with employee turnover, hiring and recruiting". National Trench Safety, which provides infrastructure safety solutions, has a distributed business model with locations across the globe, making it challenging to foster a common culture among employees. "I had been intrigued by a shared ownership model for a while, and a lightbulb went off," he says.

At National Trench Safety, Tailwind's shared ownership programme extends $10,000 in equity annually to each employee, supplementing existing wage and benefits packages at no cost to workers. It's a voluntary programme whose only requirement is that the employee must remain at the organisation.

According to Deloitte, as of 2019 there were nearly 7,000 active employee stock ownership programmes, impacting an estimated 14 million employees and totalling about $1.4 trillion in assets.

Such programmes are most prevalent in the engineering and construction, manufacturing and building materials industries, which can struggle to forge positive employee cultures with a motivated workforce.

Yet the model is relatively new to the middle market. It can be difficult for business owners and PE partners to implement equity-sharing programmes independently, particularly for smaller businesses or those backed by private equity firms with fewer resources.

"At the end of the day, if you look at it on a spreadsheet, it's dilutive to your ownership," says Calhoun. "At National Trench Safety, we grant about $9 million a year in stock to the employee population annually. Perhaps for a large-cap private equity firm, that's not an enormous number. But for a middle-market, lower middle-market business, it's a very big piece of the equity pie. You have to believe that the other benefits of a shared ownership model will create more value for your investment. "

But there is limited historical evidence for success within middle-market businesses. Calhoun acknowledges that while he's so far seen anecdotal success with implementing this model at Tailwind portfolio companies, it's still early days.

At National Trench Safety, for example, there was a significant reduction in employee turnover. The shared ownership model is likely one of several reasons employees are staying on—other initiatives, such as a wage evaluation and safety improvements, could be contributing too.

Another plus of employee ownership programmes is the need for constant communication between employees, business leaders and PE partners to make them work—which tends to foster a healthier, more engaged company culture.

For investors willing to dilute ownership, a shared ownership model may be an effective hedge against a tight labour pool and could insulate a company from the impact of a market downturn.

"It was a little bit of an experiment for us," Calhoun says in an interview with Carolyn Vallejo of ACG Media. "But we're now fully bought in and are huge believers."

France

What motivates employees to invest in their company?

According to *Principles for Responsible Investment* blog, in France, employees own around 3.5 percent of the share capital in the companies where they work, compared with eight percent in the United States.

In addition to financial benefits, the expected performance of company shares is a key driver. Furthermore, employees generally feel more familiar with their company and may think they hold more reliable information on it than the rest of the market.

Loyalty to employers is also a driver. For example, employees of independent firms, who can thus invest directly in their division, invest 10 percent more in their company than employees of conglomerates, who are further from the decision -making centre. Employee loyalty is particularly strong for companies who face a hostile takeover.

Does ESG encourage employees to take up shares?

In their paper, *Altruism or Self-Interest? ESG and Participation in Employee Share Plans*, Maxime Bonelli, HEC Paris; Marie Brière, Amundi, Paris Dauphine University, and Université Libre de Bruxelles; and François Derrien, HEC Paris, examine whether a company's environmental, social and governance (ESG) performance affects the motivation of its employees to become shareholders.

They use data on the savings plans of large corporations – collective savings schemes under French law that allow employees (and small company managers) to buy investment funds – managed by Amundi ESR in France and assess the investments of nearly 400,000 employees.

They conclude that after ESG incidents, employees are less likely to invest and invest smaller amounts in their company's stock. Incidents in the "Social" category, especially those related to working conditions and local incidents, are the ones that affect these investment decisions the most. Pecuniary motives are unlikely to explain this finding. Overall, the results suggest that ESG policies directly impacting the well-being of employees affect employee satisfaction and loyalty the most.

India

Flipkart announces $700mn Esop payout for 25,000 employees

After completing its separation process from PhonePe, ecommerce giant Flipkart announced a cash payout for the employees parting from PhonePe, *BWDisrupt* reported.

Out of the total number of people eligible for the payout, 14,000, or 70 percent of Flipkart's workforce, remain on the company's payroll. Former employees who own PhonePe stock will also be eligible for the payout, according to the sources, without specifying how many former employees will be eligible.

"We are pleased to announce that employees who are holders of Flipkart employee stock option plans will receive a one-time discretionary cash payout as part of the transaction. "This payout represents the value of the PhonePe holding within those Flipkart options," said Kalyan Krishnamurthy, ceo of PhonePe, in an internal email.

The email added that the payout will be worth USD43.67 per option, taking into account the rise in PhonePe's valuation.

Dreaming of getting rich through your startup Esop?

According to *the Times of India*, a new successful startup has the potential to create wealth for everyone – founders, investors, and employees. This is one big reason people join new ventures is their Employee Stock Ownership Plan. Under the Eso scheme, startups offer stock options to their employees.

Stock options represent an agreement that offers an employee the right to buy company stock at a pre-decided price. This price is usually the estimated current valuation of the company. As the startup grows, it raises more capital by Private Equity rounds at a higher valuation. This increases the company valuation, thereby increasing itsb share price. But these shares, in an unlisted company, cannot easily be sold. There are only three exit scenarios: if the startup decides to buy back, an external investor shows interest in your stake, or the company launches an IPO.

USA

Sanders' Bill to expand worker ownership passes Senate in omnibus

Legislation that Senator Bernie Sanders unveiled 13 years ago to help boost workplace democracy and curb worsening inequality in the United States was included in the $1.7 trillion omnibus package approved by the Senate on December 29 2022.

Modelled on the success of employee ownership centres in Ohio and Vermont, Sanders' Worker Ownership, Readiness, and Knowledge (WORK) Act authorises a $50 million grant programme to help create and expand employee ownership centres around the country.

A&H announces oversubscribed close of flagship fund to close racial wealth gap

Black-led investment fund Apis & Heritage (A&H) Capital closed its flagship Legacy Fund I at $58.1 million, is helping low income workers and workers of colour to become owners/operators of great businesses, creating broad based wealth for workforces across America.

Apis & Heritage Capital Partners (A&H), an investment fund that finances the conversion of companies with substantial Black and Brown workforces into 100 percent employee-owned businesses using a 100 percent Esop structure, announced on December 22, the final close of its first investment fund at $58.1 million, surpassing its initial cap of $50 million. A&H Legacy Fund I is now closed to new investors.

Who says unions and Esops don't mix?

Unionisation is on the rise. So is participation in employee stock option plans. In a piece for *Forbes*, contributor Mary Josephs wrote that 2022 has proven to be the boom year for both unionisation and Esops – and the trend should continue. Well-known companies where a union was considered impossible – Starbucks, Amazon, Trader Joe's and Apple, among others – face increased unionisation activity. If this trend continues, it will halt the decades-long decline in private sector union membership.

It's a myth that trade unionism incompatible with employee ownership. What's increasingly clear as inflation outpaces wage gains is that unionism and employee ownership offer paths to economic equality for employees which often go together. Unionised companies have established Esops for their employees' benefit just as they've often formed Esops that benefit their non-union employees.