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Colorado Rolls Out A Welcome Mat For ESOPs

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Employee stock ownership plans (“ESOPs”) are a special breed of qualified retirement plans. Whereas a traditional profit sharing or 401(k) plan is typically invested in mutual funds, an ESOP is designed to invest primarily in stock of the sponsoring employer. This means that an ESOP can deliver powerful incentives to employees who are motivated to work to better their own retirement funds. In recognition of these benefits, policy makers and academics have long touted ESOPs and other forms of employee ownership. Colorado is the latest in that trend.

Colorado's Governor Jared Polis recently made good on a campaign promise by signing an executive order establishing a “Commission on Employee Ownership” within the Colorado Office of Economic Development and International Trade. The 10-25 member Commission will have a three-pronged approach:

1. establishing a network of technical support for companies wanting to convert to employee ownership by collaborating with accountants and attorneys to facilitate such conversions;
2. educating businesses and local leaders about the economic and community benefits of employee ownership; and
3. removing obstacles to the advancement and development of employee ownership.

The Commission puts force behind a 2017 law passed in Colorado that offers up to \$10,000 in revolving loans to help family-owned businesses convert to employee ownership.

These policy initiatives are popular in the press because of the tangible and intangible benefits that ESOPs and similar benefits offer employees. In addition to the feel-good factor, though, ESOPs can offer selling shareholders financial and tax incentives that they would not necessarily obtain in a sale to a third party or an outside investor. For example, Internal Revenue Code Section 1042 can be used to defer income tax on the proceeds a selling shareholder receives from a sale to an ESOP, if the proceeds are reinvested in certain qualified replacement investments.

If you are a business owner and would like to know more about ESOPs, including incentives for converting a business in Colorado into an ESOP, please contact a member of Holland & Hart's [ESOP Team](#).