Employee Stock Ownership Plans (ESOP)

A full-service law firm with 14 offices nationwide, Lathrop GPM provides expertise, service and value to employee-owned companies, ESOP fiduciaries and ESOP lenders on a local, regional and national basis. Our client list includes some of the largest, most sophisticated and successful ESOP companies in the country. We provide seasoned and practical advice regarding corporate, finance, tax and ERISA issues involved in the structure, negotiation and consummation of complex ESOP transactions, and we regularly advise our clients on matters involving ESOP operations, corporate governance, executive compensation and fiduciary responsibilities. We are well-versed in the following:

- C corporation dividend deduction involving ESOPs
- Corporate governance "best practices" in ESOP-owned companies
- Correcting ESOP operational errors
- ESOP administration issues
- ESOP design to address repurchase obligations
- ESOP distribution requirements and diversification
- ESOPs in IRS and Department of Labor audits
- ESOPs in mergers & acquisitions
- Fiduciary duties of ESOP trustees
- Leveraged ESOP transactions
- Pass-through voting and tender offers
- Prohibited transactions involving ESOPs
- S corporation ESOP issues, including Section 409(p) anti-abuse testing
- Section 1042 deferral of tax on sale to an ESOP
- Termination of ESOPs
- Use of ESOPs in business ownership succession

Because it is part of a full-service law firm, our ESOP team is able to draw on the expertise of corporate finance, mergers & acquisitions, tax,

securities, employment, lending, and estate planning lawyers, to name just a few of the areas of expertise available.

Our work with ESOP companies has involved public as well as private companies in a variety of industries, including advertising, architecture, automotive, banking, chemicals, commodities trading, construction, defense, energy, engineering, financial services, health care, insurance, manufacturing, marketing, pharmaceuticals, printing, professional services, retail, security, telecommunications and trucking.

Representative Matters

- Represented architectural product manufacturer in the sale of the owner's equity stake to an Employee Stock Ownership Plan. Based on our recommendation, an ESOP trustee was engaged to represent the interests of employees. Our firm proposed a transaction that involved the redemption of 97.5% of the founder's stock, including shares held on behalf of his wife and three daughters, all financed by the sellers. The remaining shares were purchased by the ESOP at a substantial discount due to the debt assumed by the company in the redemption stage of the transaction. Existing equity-based compensation programs were redesigned to provide appropriate incentives to key management employees.
- Represented a medical services company in the sale of 98% of the company's stock by its individual shareholders to the company's ESOP, resulting in a 100% ESOP-owned company. Previously advised the company with respect to a reorganization of the company and its many brother-sister companies into a holding company/subsidiary structure, and then assisted the holding company with the establishment of an ESOP for the benefit of its and its subsidiaries' employees.
- Represented an institutional ESOP trustee in the purchase of 10% of the stock of a grocery store chain, in connection with the establishment of a new ESOP for the benefit of eligible employees.
- Represented a small manufacturing company in the sale by its ESOP of 100% of the company's stock to a large multinational financial company, thereby resulting in a premium over the last appraised stock value to accrue to the accounts of ESOP participants.
- Counsel to an ESOP company in successful acquisition of another employee-owned company. By structuring a cash-for-stock

transaction followed by a merger of the two ESOPs, we helped our client achieve a two-for-one advantage. The client expanded its business and simultaneously increased the cash balances in its ESOP to fund future distributions to retired and terminated employees.

- Advised ESOP company in merger transaction with second ESOP company. The steps were sequenced in such a way that the target's non-ESOP shareholders were able to defer paying taxes on the gain by selling in a leveraged transaction to a newly created ESOP without depressing the value of the stock already owned by the target's employees in an existing ESOP.
- Worked with client's board of directors to develop multi-prong strategy for managing ESOP repurchase obligations, including an early distribution window, a re-leveraging transaction, interest-free company loans, and redemptions.